

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

- - - -

DEARREA KING, Adm., of the )  
ESTATE OF TYREE KING, ) CASE NO. 2:18CV1060  
Plaintiff, ) JUDGE EDMUND A. SARGUS, JR  
-V- ) CHIEF MAG. JUDGE ELIZABETH  
THE CITY OF COLUMBUS, et al,) P. DEAVERS  
Defendant. )

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CHRISTOPHER M. COOPER, Adm., )  
Of the ESTATE OF DEAUNTE ) CASE NO. 2:19CV3105  
BELL-McGREW, )  
Plaintiff, ) JUDGE GEORGE C. SMITH  
-V- ) CHIEF MAG. JUDGE ELIZABETH  
THE CITY OF COLUMBUS, et al,) P. DEAVERS  
Defendant. )

- - - o0o - - -

JAMES J. ENGLAND, ) CASE NO. 2:19CV1049  
Plaintiff, ) JUDGE SARAH D. MORRIS  
-V- ) MAGISTRATE JUDGE KIMBERLY  
THE CITY OF COLUMBUS, et al,) A. JOLSON  
Defendant. )



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The video teleconference deposition of SERGEANT ERIC PILYA, a witness herein, being called by the Plaintiffs as if upon cross-examination under the statute, and taken before Megan A. Medved, a Notary Public within and for the State of Ohio, pursuant to the agreement of counsel, on Monday, November 24th, 2020, at 10:00 a.m., at the Offices of Tackla Court Reporting, LLC, 1020 Ohio Savings Plaza, 1801 East 9th Street, City of Cleveland, County of Cuyahoga, and the State of Ohio.

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1 P-R-O-C-E-E-D-I-N-G-S

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3 SERGEANT ERIC PILYA of lawful age, a witness  
4 herein, having been first duly sworn, as hereinafter  
5 certified, deposes and says as follows:

6 - - - -

7 CROSS-EXAMINATION OF SERGEANT ERIC PILYA

8 BY MS. GELSOMINO:

9 Q. Good morning. Will you please state your full  
10 name for the record?

11 A. Eric Ian Pilya.

12 Q. What is your position with the Columbus Division  
13 of Police?

14 A. I'm the first shift Homicide Sergeant, and the  
15 team leader for the Critical Incident Response Team.

16 Q. Do you have an employee number or badge number?

17 A. My badge number is 5115.

18 Q. Has that ever changed?

19 A. Only when I got promoted.

20 Q. When was that?

21 A. June of 1994.

22 Q. Okay. My name is Sarah Gelsomino. I'm one of  
23 the Plaintiff's attorneys in these cases, along with two  
24 of my co-counsel who are here, Sean Walton and  
25 Jacqueline Greene who you saw earlier. You understand

1 you have been designated by the City of Columbus to give  
2 binding testimony on behalf of the city in three  
3 different cases?

4 A. Yes.

5 Q. Okay. So one is the case called Cooper, which  
6 is related to the shooting of Deaunte Bell-McGrew. One  
7 is the case related to the shooting of Tyree King, and  
8 the third is the shooting related to James England. Do  
9 you understand that?

10 A. Yes.

11 Q. What does it mean to you to be designated by the  
12 city to give binding testimony?

13 A. I guess as leader of the Critical Incident  
14 Response Team I'm in the position to give information on  
15 the investigation of those cases.

16 Q. And all of the other cases that have been  
17 investigated since 2005, right?

18 A. No. I took over as team leader of the Critical  
19 Incident Response Team in February of 2011.

20 Q. This may be a question for your lawyer.

21 MS. GELSOMINO: Michael, I would like  
22 to put on the record what he's been designated to  
23 testify to in the notice. I have found that it's easier  
24 for the lawyer to do this rather than to ask the actual  
25 deponent to do this in the last couple of depositions.

1 MR. HALLORAN: We can stipulate to  
2 that, if you would like me to just read off what the  
3 destinations is for today.

4 MS. GELSOMINO: That would be great.

5 MR. HALLORAN: In the King case  
6 numbers 1.)B and 1.)C, number 2.)B, number 6, number  
7 7.)B. In the England case number 1.)B, 1.)C, number  
8 2.)B number 6, number 7.)B. In the Cooper case, number  
9 1.)B, 1.)C, 2.)B, 6, and 7.)B.

10 MS. GELSOMINO: Thank you. I  
11 appreciate that.

12 BY MS. GELSOMINO:

13 Q. I'm going to read for you what these  
14 destinations are, and I'd like you to tell me if you're  
15 prepared to testify on these today. The first is all  
16 division of police procedures, policies and practices  
17 from 2010 to present concerning the use of deadly force  
18 investigations and the investigations into the shooting  
19 of these three victims. Are you prepared to testify to  
20 that today?

21 A. Yes.

22 Q. Are you prepared to testify to all the division  
23 of police's training of police officers and the  
24 materials used for those training from 2010 to the  
25 present regarding use deadly force investigations?

1 A. I have a question concerning this one. I don't  
2 actually do that training. I can speak towards it, but  
3 I don't conduct that training.

4 Q. Well, you've been designated by the city to give  
5 binding testimony regarding that today.

6 A. Okay.

7 Q. Are you prepared to testify to all the deadly  
8 force by members of the division of police from 2005 to  
9 present?

10 A. No. I would only know about the cases from  
11 February of 2011.

12 Q. Have you made any effort to gather information  
13 regarding any of the cases prior to 2011?

14 A. No.

15 Q. Why not?

16 A. I wasn't on the CIRT team at that time.

17 Q. You have access to all of the information  
18 regarding uses of deadly force by members of the  
19 division of police before 2011, right?

20 A. There are records, yes.

21 Q. If you made an effort you could have gathered  
22 those and reviewed them in order to testify on that  
23 topic today, correct?

24 A. Yes.

25 MR. HALLORAN: Objection. Go ahead.



1 BY MS. GELSOMINO:

2 Q. You've also been designated to testify on behalf  
3 of the City of Columbus regarding all investigations,  
4 reviews, findings and outcomes from 2005 to the present  
5 for all deadly force events concerning the chain of  
6 command policy and disciplinary review. Are you  
7 prepared to do that today?

8 A. Yes.

9 Q. Great. What have you done to prepare for your  
10 deposition on behalf of the City of Columbus today?

11 A. I reviewed the three cases that are mentioned,  
12 Deaunte Bell, James England and Tyree King. And I also  
13 reviewed the use of force division directives.

14 Q. When you say that you reviewed the investigation  
15 for these three cases, what does that include?

16 A. Reading over the case package information.

17 Q. Is that the CIRT investigation?

18 A. Correct.

19 Q. Did you review anything else related to any of  
20 those cases?

21 A. No.

22 Q. Did you review anything else in preparation for  
23 the deposition today?

24 A. No.

25 Q. How much notice did you have before you came

1     **here to testify?**

2     A.       I don't recall when the first notice went out  
3     that we were going to be deposed and to give some dates  
4     that we would be available. That was, I don't know --  
5     Mike would probably be a better person to ask that  
6     question to.

7     **Q.       Have you had over a month since you received**  
8     **notice of this deposition?**

9     A.       I would say approximately around there.

10    **Q.       So you had approximately a month to prepare.**  
11    **And during that month, did you do anything to get ready**  
12    **other than review the division directives and the case**  
13    **investigations for each of these three cases?**

14    A.       No.

15    **Q.       When did you review those?**

16    A.       Over the last couple of days.

17    **Q.       Okay. In the course of that month that you had**  
18    **to prepare for these depositions, did you make any**  
19    **effort to gather these documents or information**  
20    **reasonably available to the City of Columbus related to**  
21    **each of these designated topics that we just went over?**

22                   MR. HALLORAN: Objection. You can  
23    answer.

24    A.       Like I said, I reviewed the division directives  
25    and policies in regard to use of deadly force.

1 BY MS. GELSOMINO:

2 Q. Okay. You agree with me that that is not all of  
3 the information that's reasonably available to the City  
4 of Columbus related to these designated topics, right?

5 A. Yes.

6 Q. You could have done far more information  
7 gathering in order to prepare to testify today?

8 MR. HALLORAN: Objection.

9 A. I'm not sure I knew exactly the topics that I  
10 would be testifying to.

11 BY MS. GELSOMINO:

12 Q. Sure. I understand you've been put in this  
13 position. Do you understand that as a designated 30(b)6  
14 witness for the City of Columbus you had a  
15 responsibility to gather all information known or  
16 reasonably available to the entire City of Columbus  
17 regarding these designated topics?

18 MR. HALLORAN: Objection.

19 A. Not really, no.

20 BY MS. GELSOMINO:

21 Q. Did you make any effort to gather documents that  
22 are responsive or related to these areas and produce  
23 them to me via your lawyer?

24 MR. HALLORAN: Objection.

25 A. No.

1 BY MS. GELSOMINO:

2 Q. Why not?

3 MR. HALLORAN: Objection.

4 A. I wasn't told to do so.

5 BY MS. GELSOMINO:

6 Q. Would you have done so had you been told?

7 A. Absolutely.

8 Q. Do you have any documents with you today in your  
9 box room?

10 A. No, I do not.

11 Q. I know you've been through depositions before,  
12 but just as a reminder we have Megan transcribing  
13 everything that we're both saying, so we want to do our  
14 best to facilitate her making a nice clean record for  
15 us. Let's try not to talk over each other. Answer  
16 everything out loud so she can write it down. She can't  
17 write down uh-huh or anything like that.

18 Sometimes it's a little extra complicated over  
19 Zoom, but let's bear with each other and do our best.  
20 If you don't understand something that I said, either  
21 because I asked a less than perfect question or because  
22 some kind of a technology glitch, just tell me. If you  
23 do answer a question I'll assume you understood it, is  
24 that fair?

25 A. Yes.

1 Q. You understand that Michael Halloran is  
2 representing you in this deposition, right?

3 A. Yes.

4 Q. As you've already experienced, he may object  
5 throughout the deposition. You can give him time to  
6 make his objection, but then unless he instructs you not  
7 to answer, you're still expected to answer the question  
8 that I asked. Okay?

9 A. Yes.

10 Q. Did you talk with anyone about this deposition  
11 before you came here today?

12 A. Mike Halloran.

13 Q. Okay. Anyone other than your lawyer?

14 A. No.

15 Q. Okay. You've been with the department for a  
16 while. Can you just give me a quick overview of your  
17 assignments with -- should I call it the division or  
18 department, does it matter?

19 A. Division.

20 Q. Okay. Just give me a quick overview of your  
21 employment history with them.

22 A. I was hired on December 13th of 1987. After the  
23 academy I went through several different patrol  
24 assignments. I then went to homicide. I was promoted  
25 June of 1994. From there I went to the Communications

1 Bureau as a sergeant. I then went out to several patrol  
2 assignments as a sergeant. I then went to the Strategic  
3 Response Bureau Enforcement Teams, and then I've been in  
4 homicide since 2001.

5 **Q. All right. Have you ever applied for an**  
6 **additional promotion?**

7 A. No.

8 **Q. Why not?**

9 A. I really wanted to be in homicide, and once I  
10 got there, there was no going anywhere else. I didn't  
11 want to get promoted out of there.

12 **Q. Why did you always want to be in homicide?**

13 A. I just found it to be extremely interesting.

14 **Q. What about it is interesting to you?**

15 A. Just the whole process of the investigation, and  
16 the importance of the investigation.

17 **Q. Why is a homicide investigation so important?**

18 A. I believe that homicide investigation is  
19 important to seek justice for the families of the  
20 victims.

21 **Q. Have you ever received any discipline from the**  
22 **division?**

23 A. Yes.

24 **Q. Tell me about it.**

25 A. It's been a long time. I'm sure I've received

1 discipline out of accidents. I believe I received  
2 discipline out of my detective not getting his walkie  
3 programmed on time, and other than that -- oh, I did get  
4 disciplined for improperly performing performance  
5 evaluations once.

6 **Q. Why?**

7 A. At that time I had thought it was better to  
8 utilize the halo effect with some detectives because it  
9 really didn't go anywhere. But then, I had a detective  
10 that did not do a good job on a case and I wanted that  
11 detective disciplined, and they brought up that that  
12 detective had all excellent on their performance  
13 evaluation. So I said that I had utilized the halo  
14 effect at that time, and they deemed that to be an  
15 improper reason for completing performance evaluations.

16 **Q. What's the halo effect?**

17 A. Basically the performance evaluation can't  
18 really be used for anything. It's not used for  
19 promotion or pay increases or anything of that nature,  
20 so I felt it was better across the board to give high  
21 marks on the performance evaluation even if a person was  
22 a little deficient in an area.

23 **Q. Why?**

24 A. Because it didn't go anywhere. Every time that  
25 you used something negative it just decreases the moral

1 of that individual employee, so I felt it was better not  
2 to do that since they didn't go anywhere.

3 **Q. So in order to keep moral up you would give high**  
4 **marks even if an employee was deficient in a particular**  
5 **area?**

6 A. On the performance evaluations. Now, if they  
7 were deficient I would handle those deficiencies with  
8 that individual detective. It was just on the  
9 performance evaluation. Since it didn't go anywhere I  
10 felt that was the better way to handle that.

11 **Q. What's the point of a performance evaluation?**

12 A. It's a document that's completed once a year on  
13 each of your subordinates where you evaluate their  
14 performance to the division.

15 **Q. What's the purpose of it if it doesn't go**  
16 **anywhere?**

17 A. I don't know.

18 **Q. Is there a purpose?**

19 A. I don't know.

20 **Q. In your capacity as a supervisor within the**  
21 **department here to testify about disciplinary reviews,**  
22 **do you believe there to be a purpose to the performance**  
23 **evaluation and the way that they're handled in the**  
24 **division of police?**

25 MR. HALLORAN: Objection. Go ahead.



1 A. I think the performance evaluations are a time  
2 where you can set aside time each year and sit down with  
3 your employees and discuss how they're doing.

4 BY MS. GELSOMINO:

5 **Q. But there's no actual impact because those**  
6 **aren't used in any other proceedings?**

7 A. Correct.

8 **Q. Are employee evaluations considered in**  
9 **disciplinary reviews?**

10 A. Sometimes.

11 **Q. When?**

12 A. I think to refute information such as this. I  
13 was saying that this detective was deficient, and yet  
14 the performance evaluation was contrary to that. That's  
15 the only time that I really feel that the performance  
16 evaluation plays a role in that process.

17 **Q. So performance evaluations are just used to**  
18 **rebut any kind of allegation of deficiency or**  
19 **wrongdoing?**

20 A. I think that's when they come into play the  
21 most. Yes.

22 **Q. Has a performance evaluation ever been used to**  
23 **show any kind of history of deficiency or use of**  
24 **misconduct?**

25 A. Not that I've been involved in, no.

1 Q. Has a performance evaluation been used by the  
2 division in order to identify a trend in police officer  
3 conduct which could lead to deficiencies?

4 A. I'm sure they have, yes.

5 Q. But you don't know of any examples?

6 A. I have not had the occasion to have that be the  
7 case.

8 Q. Are performance evaluations used to note  
9 misconduct or note potential warning signs in any kind  
10 of early warning system within the division?

11 MR. HALLORAN: Objection.

12 A. I think it's fair to say that. If there was an  
13 employee that was having deficiencies the supervisor  
14 could document that through a performance evaluation,  
15 yes.

16 BY MS. GELSOMINO:

17 Q. But then, would that performance evaluation be  
18 used or analyzed, audited in any way to track potential  
19 warning signs?

20 A. I think it's on a case-by-case basis with  
21 individual officers. A supervisor could put together a  
22 program to help them do better in the areas that are  
23 deficient.

24 Q. Do you know of any examples of that happening?

25 A. Not with me personally, no.

1 Q. As a supervisor in the division of police have  
2 you ever received any training to that end?

3 A. Yes.

4 Q. What?

5 A. Just in-service training on performance  
6 evaluations and completing them.

7 Q. What were you trained on in those in-service  
8 trainings?

9 A. They would just go over the form and discuss how  
10 to complete the form.

11 Q. Other than being taught how to fill in the form,  
12 have you ever received any training from the division of  
13 police for how to look for warning signs and potential  
14 problematic behavior in your subordinates through the  
15 use of performance evaluations?

16 A. I believe that was part of the training program  
17 that if you check the boxes -- I can't recall what the  
18 boxes are right off hands. Development needed. Then  
19 there's a process that you have to go through with that.  
20 If they need development in certain areas, then you have  
21 to put a plan together to help them do better in that  
22 area.

23 Q. Have you ever checked the develop needed box for  
24 any of your subordinates?

25 A. I don't believe so, no.

1       **Q.           How many performance evaluations have you**  
2       **completed for people within the division of police?**

3       A.           Well, I don't know when the performance  
4       evaluations went into effect. When I first got promoted  
5       we did not have those for sworn personnel. Over the  
6       years -- we did have it, I would say, at least back in  
7       2002 maybe I recall that I had them. You do one a year  
8       for each of your employees.

9       **Q.           Approximately how many is that for you?**

10      A.           A bunch.

11      **Q.           Over 100?**

12      A.           I'm sure.

13      **Q.           Over 200?**

14      A.           Possibly.

15      **Q.           Could it be over 500?**

16      A.           Okay. Well, I have approximately ten detectives  
17      that I do every year and I've done that for  
18      approximately 20 years. So close to 200, I would say.

19      **Q.           You've never identified any development needed**  
20      **for any of them?**

21      A.           No.

22      **Q.           When did you first become associated with the**  
23      **CIRT team?**

24      A.           I took over as the team lead in February of  
25      2011, but probably mid-2009 I started shadowing Sergeant

1 Jeffery Sagstetter, who was the team leader at that  
2 time.

3 **Q. Were you a member of the team at that point in**  
4 **mid 2009?**

5 A. I was, but I didn't actively do investigations.  
6 I was just following Sergeant Sagstetter around, and he  
7 was instructing me on how to be the team lead, because I  
8 was going to be the team lead when he retired.

9 **Q. Who selected you for that?**

10 A. I believe it was Deputy Chief Flanotta at the  
11 time.

12 **Q. What were your qualifications to become the team**  
13 **lead?**

14 A. I believe it was based on seniority. I was the  
15 senior homicide sergeant at the time.

16 **Q. What kind of training did you receive to be the**  
17 **team lead for CIRT?**

18 A. Shadowing Sergeant Sagstetter for approximately  
19 a year to two years.

20 **Q. Anything else?**

21 A. No. That was pretty much on-the-job training  
22 part of it.

23 **Q. Are CIRT investigations the same as other**  
24 **homicide investigations?**

25 A. I would say yes, but there are differences.

1       **Q.           What are the differences?**

2       A.           Being that it's a police action there's other  
3       steps taken at the scene. There's formal statements  
4       that you do with the officers and things of that nature  
5       that you do do those in a homicide investigation, it's  
6       just a little bit different.

7       **Q.           Are there any differences other than steps taken**  
8       **at the scene, and formal statements with officers?**

9       A.           Not on CIRT's behalf.

10      **Q.           Are there on any other part of the division's**  
11      **behalf?**

12      A.           Well, these cases, after the criminal  
13      investigation is finished, then they move on to an  
14      administrative review.

15      **Q.           When you say, "these cases," what do you mean?**

16      A.           CIRT cases. Cases involving critical incidents  
17      involving police officers.

18      **Q.           And who conducts the administrative review?**

19      A.           We have a Firearms and Death Review Board that  
20      these cases go to. It's made up of three police  
21      commanders, and they make their recommendations as to  
22      whether it's in-policy or not.

23      **Q.           All right. So explain to me all of the**  
24      **differences then between -- I mean, a CIRT investigation**  
25      **for like a police use of force, which is lethal, is a**

1     **homicide investigation, right?**

2     A.           Yes.

3     **Q.           How is it different than other homicide**  
4     **investigations?**

5                         MR. HALLORAN:  Objection.

6     A.           Answer?

7                         MR. HALLORAN:  Yes.

8     A.           I think it's different because you have more  
9     cooperation from the quote, unquote, suspect.  They will  
10    come back and give you some information about the scene  
11    so that the crime scene knows where to search for  
12    evidence.  They'll come in with their attorney and  
13    provide a written statement, which we don't usually get  
14    from civilian homicide suspects.  I would say those are  
15    the primary differences.

16    BY MS. GELSOMINO:

17    **Q.           What do you mean by quote, unquote, suspect?**

18    A.           Well, it is a homicide investigation, and the  
19    police officer is technically a suspect in the homicide  
20    investigation.  But if it's found to be a justifiable  
21    homicide, because law enforcement officers are allowed  
22    by law to protect their lives or the lives of someone  
23    else, you know, it's a police action rather than a  
24    criminal murder.

25    **Q.           Correct.  That is determined after a conclusion**

1 is made regarding whether or not the use of force is  
2 justified or unjustified, right?

3 A. Well, technically no. That determination is  
4 made by a Grand Jury. If they decide that it wasn't  
5 criminal, then it becomes a justifiable homicide.

6 Q. So up until the Grand Jury makes a decision  
7 then, the police officer is a suspect, right?

8 A. Correct.

9 Q. Why aren't they treated as a suspect?

10 A. They are treated as a suspect.

11 Q. Is there a -- do you believe that any of the  
12 CIRT members in the division treat an officer suspect  
13 differently because of the potential that their actions  
14 will be deemed a police action and not a homicide?

15 A. Yes.

16 Q. How so?

17 A. Well, little things. For instance, we don't put  
18 a police officer in the back seat of a cruiser --

19 Q. Okay.

20 A. -- because they're with an officer support team  
21 member, and if it is just a police action, they're not  
22 treated like a suspect by being placed in the back of a  
23 cruiser. That's one of the ways that occurs.

24 Q. What are the other ways?

25 A. I would say having them be cooperative and



1 coming back to the scene and giving us information about  
2 where to look for evidence and things like that. That  
3 would not happen with a civilian suspect.

4 **Q. Why not?**

5 A. Mostly because the civilian suspects are  
6 un-cooperative.

7 **Q. Have you ever asked a civilian suspect to give**  
8 **you information about a scene?**

9 A. Yes.

10 **Q. Have you ever had a civilian suspect agree to**  
11 **give you information about a scene?**

12 A. Yes. But it's rare that they agree to that is  
13 what I'm saying.

14 **Q. Have you ever at any point allowed a civilian**  
15 **suspect to stay with support people after a shooting?**

16 A. No.

17 **Q. Have you ever after a shooting had a civilian**  
18 **suspect you did not put in the back seat of a cruiser?**

19 A. I wouldn't think so, no.

20 **Q. Have you ever had a civilian suspect accused of**  
21 **a potential homicide who you didn't put in handcuffs?**

22 A. Probably not.

23 **Q. Have you ever had a civilian suspect accused of**  
24 **a homicide who you allowed days before you attempted to**  
25 **interrogate regarding the incident?**

1 A. No.

2 **Q. Have you ever attempted to interrogate a police**  
3 **officer suspect immediately after a fatal shooting?**

4 A. Every time.

5 **Q. You attempt to interrogate them immediately?**

6 A. Yes.

7 **Q. How so?**

8 A. So when the officer comes back to the scene we  
9 ask them to tell us where they were standing when they  
10 fired and in which direction they fired, so that we can  
11 look for evidence, and also look for where their  
12 projectile may have gone to make sure it didn't strike  
13 anybody else or anything like that. It gives us a gist  
14 on a crime scene to know where to collect evidence.  
15 After that they're taken on our command bus, they're  
16 photographed by crime scene, and then we take their  
17 weapon, count their rounds so crime scene knows how many  
18 shell casings and projectiles to look for. We replace  
19 their duty weapon with another duty weapon and we  
20 attempt to get a statement from them. In most cases, I  
21 would say 99.9 percent of the cases, they have their FOP  
22 attorney, and the FOP attorney refuses to allow them to  
23 make a statement at the time.

24 **Q. Do you consider the questions that you ask an**  
25 **officer suspect on the scene regarding the location of**

1     **bullets and stuff to be an interrogation?**

2     A.           No.

3     **Q.           Do you believe that an officer refusing to give**  
4     **a statement on the night of is somehow indicative of**  
5     **guilt?**

6     A.           No.

7     **Q.           Do you believe that a civilian suspect refusing**  
8     **to give a statement in an attempt interrogation is**  
9     **somehow indicative of guilt?**

10    A.           No.

11    **Q.           Why not?**

12    A.           Because I believe they're exercising their  
13    rights to remain silent and to speak with an attorney  
14    before giving a statement.

15    **Q.           You said that the officers would come back to**  
16    **the scene to give information regarding the location of**  
17    **bullets and stuff?**

18    A.           Correct.

19    **Q.           Come back from where?**

20    A.           At the immediate conclusion of a critical  
21    incident the officer's removed from the scene by an  
22    officer support team officer and taken to the nearest  
23    police facility, a substation or headquarters, a police  
24    facility. There they await their FOP attorney, and they  
25    converse with the FOP attorney there at that location.

1 And then when we are ready at the scene for them to come  
2 back, they're transported back from the scene by the  
3 officer support team member and met there by the FOP  
4 attorney, and that's when we speak to them.

5 **Q. So you never make any attempt to speak to an**  
6 **officer suspect before they've had a opportunity to**  
7 **speak to their attorney?**

8 A. Usually by the time the CIRT arrives at scene  
9 they're already at the substation.

10 **Q. So do you make any attempt ever to interrogate**  
11 **or have any conversation with an officer suspect before**  
12 **you have given them the opportunity to talk to their**  
13 **lawyer?**

14 A. No. I would say it does not work out that way.

15 **Q. And is that -- do you believe -- would you**  
16 **consider an officer refusing to give a statement on the**  
17 **day of the shooting to be cooperative?**

18 A. No.

19 **Q. Why not?**

20 A. Because just on the surface they're not agreeing  
21 to give a statement at that time. In that particular  
22 instance, I would say that's not being cooperative.

23 **Q. So if they're not being cooperative, why are**  
24 **they treated any differently than any other civilian**  
25 **homicide suspect?**

1 A. Well, they are cooperative for the most part.  
2 In that particular sense, that's not being cooperative.  
3 They're exercising their rights of remaining silent  
4 because their attorney is there with them and advising  
5 them to do so.

6 **Q. Do you have an assumption that civilian homicide**  
7 **suspects will be uncooperative?**

8 A. No. I think with civilian suspects you can say  
9 that a lot of the time, not most of the time even, a lot  
10 of the time they're not cooperative or don't wish to  
11 give a statement, but many times they do. Each case is  
12 taken on a case-by-case basis.

13 **Q. That's fair. Why is it that police suspects are**  
14 **automatically treated differently than a civilian**  
15 **suspect?**

16 MR. HALLORAN: Objection.

17 A. Well, I would say that because by and large the  
18 vast majority of these incidents are found to be  
19 noncriminal and they're police actions. We understand  
20 that, and I think that's why there are some allowances  
21 taken by maybe removing the officer from the scene  
22 before we've had the chance to talk to them.

23 BY MS. GELSOMINO:

24 **Q. Does the fact that the vast majority of these**  
25 **investigations find that the use of deadly force was not**

1 **criminal and instead a police action, and that fact**  
2 **impacts the CIRT investigation right from the start,**  
3 **then?**

4 A. I would say only in the way that the division  
5 has developed procedures in which to allow officer  
6 support to remove them from the scene and take them to  
7 the nearest substation. For the most part other than  
8 that I think that, no, we treat every incident the same.

9 **Q. Officer suspects are granted these allowance as**  
10 **a result of the fact that most of the investigations**  
11 **into the use of deadly force find that use of force was**  
12 **not criminal, right?**

13 A. I would say that the division has taken a stance  
14 to not treat them as a criminal suspect until it's  
15 warranted.

16 **Q. At what point does it become warranted to treat**  
17 **an officer suspect as a criminal suspect?**

18 A. I believe in most aspects they are. We do the  
19 same with civilian suspects as we do with officer  
20 suspects in that we attempt to interview them. We  
21 afford them the opportunity to exercise their rights.  
22 We go through the motions with them the same at that  
23 point. I think the only difference is that you have an  
24 officer being cooperative and coming back to the scene  
25 giving us that public safety information and cooperating

1 with an investigation differently than a civilian  
2 suspect would.

3 **Q. Or maybe wouldn't, right?**

4 A. We have had occasions where they have.

5 **Q. You've had occasions where a civilian suspect**  
6 **came back and gave you information on the scene, right?**

7 A. Yes. It's the same thing. If we go in and try  
8 to do the initial interview with the civilian suspect  
9 and they agree to speak to us and, for instance, on a  
10 homicide investigation, they killed someone and disposed  
11 of the body in an unknown location. If we go in there  
12 and they agree to give us an initial statement and they  
13 agreed to take us to the location of the body, then  
14 we'll do that, and we'll have them return to the scene  
15 with us so we could recover that evidence, which is the  
16 body, and important to the case. There are times that  
17 that happens.

18 **Q. So in that case would you take that civilian**  
19 **suspect who is being cooperative back to the scene in**  
20 **handcuffs?**

21 A. Yes.

22 **Q. Would you take them back to the scene in the**  
23 **back seat of a police car?**

24 A. Yes.

25 **Q. Would you book them into custody that night**

1     **rather than let them go home?**

2     A.       If they have admitted to a murder and we have  
3     probable cause, yes.

4     **Q.       How is that any different than a police officer**  
5     **who has admitted to using deadly force that killed**  
6     **someone?**

7     A.       I think the difference comes into play where a  
8     law enforcement officer has the right by law to use  
9     deadly force to protect the life of himself or another.

10    **Q.       In certain circumstances, right?**

11    A.       Correct.

12    **Q.       But not all the time?**

13    A.       Not all the time, no.

14    **Q.       So is there a presumption that officers who use**  
15    **deadly force and actually kill people are acting within**  
16    **their rights as a police officer even at the beginning**  
17    **of the CIRT investigation before that case has been**  
18    **taken to the Grand Jury?**

19    A.       I would not say there's a presumption. I would  
20    say it's a possibility, and until we know otherwise we  
21    follow the same procedures that we always do.

22    **Q.       Which procedures that you always do?**

23    A.       As in the officer being afforded an officer  
24    support team member, being taken to the nearest police  
25    facility, things of that nature.



1 Q. You'd agree with me though, that you're treating  
2 the civilian homicide suspect very differently than a  
3 police officer homicide suspect, right?

4 A. I would say, yes. There are differences.

5 Q. And the only reason that you're treating the  
6 police homicide suspect any differently is because the  
7 majority of these uses of force are deemed to be  
8 noncriminal, right?

9 A. I would say that's why these policies were put  
10 in place over the years, yes.

11 Q. And the only reason that the CIRT investigation  
12 is any different than a typical homicide investigation  
13 is because officers who are suspects of homicide are  
14 typically found to be justified?

15 MR. HALLORAN: Objection.

16 A. I'm not sure I understand the question there.

17 BY MS. GELSOMINO:

18 Q. What don't you understand?

19 A. Could you rephrase it, please?

20 Q. You're treating civilian suspects -- strike  
21 that. You're treating officer homicide suspects  
22 differently throughout the investigation, from the  
23 moment of the shooting through the end of the  
24 investigation, you're treating them differently because  
25 the majority of these uses of force are deemed to be

1     **noncriminal and within policy, right?**

2     A.         I would say that the officers are treated  
3     differently because there's a difference between a  
4     police action and a murder.

5     **Q.         But the difference between a police action and a**  
6     **murder -- there is no difference until after the**  
7     **investigation is completed and a determination has been**  
8     **made about whether criminal activity occurred, correct?**

9     A.         Technically, yes.

10    **Q.         What do you mean by technically?**

11    A.         Let me give you an example. If we had a police  
12    officer that was involved in a domestic situation and  
13    killed their spouse. On the surface of that we would  
14    treat that case much differently than one that we got to  
15    the scene and it was apparent that it was a police  
16    action. All the CIRT investigators are trained  
17    investigators that have handled a lot of different  
18    criminal cases, so we have a pretty good idea when we  
19    get there what the facts of the case are. So in the  
20    case of the example that I gave you, that officer would  
21    be placed in handcuffs and placed in the back of a  
22    cruiser. Does that make sense?

23    **Q.         An officer who uses deadly force within the line**  
24    **of duty can still be found to have committed criminal**  
25    **activity, right?**

1 A. Yes.

2 Q. Can a police shooting ever be murder?

3 A. Yes.

4 Q. When?

5 A. When the officer was acting outside the scope of  
6 his responsibilities as a police officer.

7 Q. And the only way to determine if an officer  
8 acted outside of the scope of a police officer is to  
9 conduct a thorough investigation, correct?

10 A. Correct.

11 Q. And then determine whether or not that action  
12 was criminal, correct?

13 A. Correct.

14 Q. And so, up until the point that that  
15 determination has been made an officer suspect is no  
16 different than a civilian suspect, right?

17 MR. HALLORAN: Objection.

18 A. No. I think there are subtle differences. As I  
19 said, these investigators are well-versed in what's  
20 within the scope of an officer's duties, and within that  
21 preliminary investigation that night we have a pretty  
22 good idea which direction this investigation is going to  
23 go. We're not the final determining factor. All we do  
24 is collect the facts, but there are facts available to  
25 us that allows us to come up with an idea of which way

1 this investigation is going.

2 BY MS. GELSOMINO:

3 Q. And you believe that the division's CIRT  
4 investigators can develop an idea of which direction the  
5 investigation is going on the night of the shooting  
6 itself?

7 A. Yes.

8 Q. Before conducting any witness interviews?

9 A. No. Usually those are going on simultaneous.  
10 When we first get there assignments are made, and these  
11 things are going on a lot of the times prior to the  
12 officer even getting back to the scene. We have a lot  
13 of information of what transpired there before the  
14 officer even comes back.

15 Q. The division's CIRT investigation develop an  
16 idea of where the investigation might be going before  
17 talking to the officer?

18 A. Yes. I think we can come up with the ideas of  
19 what happened during the incident prior to the officer  
20 coming back.

21 Q. Is that typically what happens in these  
22 investigations?

23 A. I would say yes.

24 Q. Are any other allowances made for police  
25 officers suspects that you haven't told me about?

1 A. No. I think that's it.

2 **Q. If a shooting is within the scope of duty, can**  
3 **it be a crime?**

4 A. No.

5 **Q. What does it mean to be within the scope of**  
6 **duty?**

7 A. It means taking action that you're required to  
8 do by division policy, by law, and taking enforcement  
9 action that you're required to take. I think when an  
10 officer would get outside the scope of their employment  
11 would be when they would be not following the law, not  
12 following the policies set forth by the division, having  
13 some malicious intent and things of that nature.

14 **Q. Officers --**

15 A. Let me put it to you this way: An officer can  
16 be attempting to do their job and make tactical errors  
17 or even administrative errors that don't rise to the  
18 level of criminality.

19 **Q. Like what?**

20 A. So, maybe, for instance, an officer gets to a  
21 scene first and doesn't wait for back up and they go in  
22 and get into an altercation with a suspect and pulls a  
23 weapon on them and they have to fire to protect their  
24 own life. They didn't commit a crime there, but I'm  
25 sure a supervisor would have said, you should have

1 waited for back up. Maybe if there were two of you this  
2 situation wouldn't have escalated. They didn't commit a  
3 crime there, but they may have made a tactical error.  
4 They were still within the scope of their duties, but  
5 there may be a retraining or discussion about the  
6 tactics that they used.

7 **Q. Can an officer be on duty trying to effect their**  
8 **duties as a police officer and still be acting outside**  
9 **of the scope of their duties?**

10 A. I don't understand. You're saying they're  
11 acting within the scope but outside the scope? I don't  
12 understand that.

13 **Q. I'm still trying to wrap my head around what you**  
14 **mean by acting within the scope. Can an officer be on**  
15 **duty and do his best to take care of his duties as a**  
16 **police officer and still take actions that are outside**  
17 **the scope?**

18 A. I don't think you can be one or the other. I  
19 think it's either within the scope or outside the scope  
20 of their duties.

21 MS. GELSOMINO: I need like a six  
22 minute break.

23 MR. HALLORAN: Thank you.

24 - - - -

25 (Thereupon, an off-the-record discussion was held.)

1 - - - -

2 BY MS. GELSOMINO:

3 Q. Have you ever -- is it the policy of the  
4 division of police to view all police involved shootings  
5 as noncriminal until the time of the Grand Jury saying  
6 otherwise?

7 A. No.

8 Q. How is that incorrect?

9 A. Well, like I described before, I think each case  
10 is different on its own merits.

11 Q. Do you know of a time when the CIRT team  
12 investigated a police involved shooting and considered  
13 it criminal from the time of the shooting?

14 A. I can only speak to CIRT as long as I've been  
15 involved, and I have not had an occasion, no.

16 Q. Are you aware of any time that CIRT has treated  
17 a police officer and a police involved shooting the same  
18 as a civilian suspect?

19 MR. HALLORAN: Objection.

20 A. I believe that other than the procedures that  
21 have been adopted by the division as far as the criminal  
22 investigation is concerned, we attempt to treat the  
23 police suspect the same as a civilian suspect in most  
24 regards.

25 BY MS. GELSOMINO:

1 Q. But you're not aware of any cases in which a  
2 civilian suspect -- a police officer suspect has been  
3 treated the same as a civilian suspect would be treated,  
4 right?

5 MR. HALLORAN: Objection.

6 A. I think I'm going to stand with my previous  
7 answer.

8 BY MS. GELSOMINO:

9 Q. Can a police officer commit a crime while acting  
10 within the scope of duty?

11 MR. HALLORAN: Objection.

12 A. No.

13 BY MS. GELSOMINO:

14 Q. How is the CIRT team comprised?

15 A. The CIRT team is made up of 12 homicide  
16 detectives. All of the homicide section sergeants are  
17 involved in the CIRT team, with one being the team  
18 leader, and then we're in the chain of command of the  
19 Major Crimes Bureau, so the lieutenant and commander for  
20 the Major Crimes Bureau.

21 Q. Did you say that all the homicide detectives are  
22 involved in CIRT?

23 A. No. All the homicide sergeants are involved in  
24 CIRT.

25 Q. Okay. So who determines which homicide



1 **detectives are assigned to CIRT?**

2 A. The team leader will make a recommendation of  
3 someone from those interested in applying for a CIRT  
4 vacancy, and then the commander will make the final  
5 determination.

6 **Q. Who's the commander?**

7 A. Currently Robert Strausbaugh.

8 **Q. Who was it in 2015 and 2016?**

9 A. I'm not really sure. I think in 2015 it was  
10 Commander Kelly Whiner, and Commander Mike Gray  
11 succeeded her. I'm not really sure what year.

12 **Q. Okay. So from the moment of a police involved**  
13 **shooting walk me through the steps. What happens?**

14 A. So an officer involved in a police involved  
15 shooting on the street, they notify their immediate  
16 supervisor, the immediate supervisor responds to the  
17 scene, separates witnesses, puts up the crime scene  
18 tape, they air for an officer support member. An  
19 officer support member will arrive, take the involved  
20 officer or officers away from the scene to the nearest  
21 police facility. They would air for a CIRT call-out,  
22 usually that means radio room will call the  
23 investigative duty desk and the investigative duty desk  
24 personnel will start to call in CIRT team. They have a  
25 list of -- there's a do not call list so they know who

1 not to call in for this. There are two teams of six.  
2 They rotate each month. In addition to that they rotate  
3 who's going to be the primary investigator, the  
4 investigative duty desk knows who that is, calls them  
5 first. They call myself, and based on the incident I  
6 may call in additional detectives, but for the most part  
7 each CIRT team requires six detective to be called in  
8 and two sergeants. One to act as team leader, one as  
9 assistant CIRT sergeant. They also call the chain of  
10 command lieutenant commander. If it's an injury they  
11 call the public information officer and we respond to  
12 the scene. In route to the scene we make sure that the  
13 command bus is in route. Hopefully it's there by the  
14 time that we get there. When we get to the scene we  
15 wait for everyone on the CIRT team to arrive, then we  
16 ask for patrol to brief us.

17 **Q. Okay. Let's stop there for a quick second.**

18 **A. Sure.**

19 **Q. We'll start back up with patrol briefing later,**  
20 **but let me do some follow-up on that. Do you get a**  
21 **phone call every time there's a police involved**  
22 **shooting?**

23 **A. Unless I'm on the do not call list because I'm**  
24 **on a vacation, out of town, sick, something like that.**

25 **Q. Did you get a phone call in the shooting of**

1     **Deaunte Bell-McGrew?**

2     A.        Yes.

3     **Q.        Did you go to the scene?**

4     A.        Yes.

5     **Q.        Did you get a phone call in the shooting of**  
6     **Tyree King?**

7     A.        Yes.

8     **Q.        Did you go to the scene?**

9     A.        Yes.

10    **Q.        Did you get a phone call in the shooting of**  
11    **James England?**

12    A.        Yes.

13    **Q.        Did you go to the scene?**

14    A.        Yes.

15    **Q.        The two teams of six that rotate, is that six**  
16    **plus a primary investigator?**

17    A.        No. It's including the primary investigator.

18    **Q.        How is a primary investigator designated for**  
19    **each shooting?**

20    A.        The one that had the oldest investigation gets  
21    the newest investigation. It's a rotations.

22    **Q.        You said that you may call in additional**  
23    **detectives. Why would you do that?**

24    A.        For instance, if SWAT or intact is involved and  
25    there's a lot of witnesses to be interviewed. For

1 instance, we had a police involved shooting one time  
2 that involved a mega-bus full of passengers. In that  
3 particular case I had to call in detectives that weren't  
4 even CIRT detectives to help with witness interviews.

5 **Q. Just because of the number of interviews?**

6 **A.** Yes. Because of the number of witnesses.

7 **Q. Do you have the discretion to designate a**  
8 **different lead detective outside of this rotation that**  
9 **you discussed?**

10 **A.** I'm sorry. Do I have the discretion?

11 **Q. To assign a different person?**

12 **A.** Can I, yes. Do I, no.

13 **Q. Did you do that in any of these three specific**  
14 **cases?**

15 **A.** No.

16 **Q. Do you call anyone else between the time that**  
17 **you -- like when you actually get that first phone call**  
18 **alerting you, what do you do?**

19 **A.** I start to get ready and respond. The detective  
20 bureau desk calls me and I will say, "give me six  
21 detectives." They'll call off that list and call me  
22 back and let me know which six detectives are  
23 responding.

24 **Q. Okay. Do you do anything else before you get to**  
25 **the scene?**

1 A. I'll usually go, either call the COM channel or  
2 use the radio in my car to see if the command bus is in  
3 route.

4 **Q. Right. What's the command bus?**

5 A. The command buss is a large RV that's outfitted  
6 with a table and an area for us to do interviews to meet  
7 and brief, to get out of the weather elements, things of  
8 that nature.

9 **Q. Do you use that in each CIRT investigation?**

10 A. When it's available, yes.

11 **Q. Do you call in any additional resources?**

12 A. How do you mean?

13 **Q. Any other equipment or personnel that you call**  
14 **in?**

15 A. If we have knowledge ahead of time that it's an  
16 outdoor scene, I may call the crime scene sergeant and  
17 say, "you guys can start this way." If a search warrant  
18 is needed I don't do that because it's going to be a lot  
19 of downtime before they can get started. That's pretty  
20 much the only person that I would call in addition on  
21 the way to the scene.

22 **Q. Okay. And what is the role of the CIRT team?**

23 A. CIRT is responsible for doing investigations  
24 involving critical incidents involving law enforcement  
25 officers, division personnel.

1 Q. And this is the criminal investigation, right?

2 A. Correct.

3 Q. Is there any other -- are you investigating  
4 anything else aside from the violation of laws?

5 A. No.

6 Q. Do you as the leader of CIRT communicate with  
7 any other leadership or chain of command when you are  
8 advised of a police involved shooting?

9 A. The only contact really is at the scene we'll be  
10 briefed by the supervisor in charge of the scene when we  
11 get there so they can give us a brief rundown of what  
12 occurred in the incident. In addition to that there  
13 will be a Firearms Review Board commander that will  
14 respond to the scene and we'll kind of walk them through  
15 what happened as well.

16 Q. Do you talk to any of your chain of command?

17 A. Yes. Usually the lieutenant and the commander  
18 are at scene.

19 Q. Okay.

20 A. Sometimes the deputy chief.

21 Q. How do you communicate with them on scene?

22 A. Just verbally.

23 Q. Do you make any effort before you get to the  
24 scene to determine what happened there, an initial  
25 report of what occurred?

1 A. No, because usually the reports that come in  
2 aren't accurate.

3 **Q. What do you mean?**

4 A. Well, a lot of times they don't even know who  
5 the officers are that are involved, how many officers  
6 are involved, information like that. So I don't really  
7 rely on any information until I get to the scene.

8 **Q. Okay. So what happens when you get to the**  
9 **scene?**

10 A. We make sure that the scene is large enough. If  
11 it doesn't contain everything that we would desire,  
12 we'll have patrol push it back. And then we wait for  
13 everyone to get there. We brief with the scene  
14 supervisor so they know. Give us a gist of what  
15 occurred and who the players are. Usually I will  
16 request to know who the involved officers are, who the  
17 police witnesses are, if there's any civilian witnesses  
18 that they have detained, and information on the suspect,  
19 the civilian suspect. If there was an injury, like what  
20 hospital they went to and things of that nature. After  
21 we've gotten that information, then I start making  
22 assignments of the detectives that responded on what  
23 they're required to do. For instance, we already know  
24 who the primary is going to be because of the rotations.  
25 I assign a scene detective. I'll assign a detective to

1 go to the hospital, if that's necessary. Interview  
2 officers. I'll assign detectives to be in charge of the  
3 officer witnesses. I'll assign detectives to be in  
4 charge of the civilian witnesses. And then as they're  
5 doing that, then they'll come back and report to me what  
6 information they got from these witnesses.

7 **Q. Do you remain on the scene the entire time?**

8 A. For the most part. I'm there until -- sometimes  
9 I leave and the scene isn't completely finished yet.  
10 They're still doing scans or things of that nature, but  
11 for the most part I'm there for the majority of the  
12 investigation.

13 **Q. You said you request to know who are the police**  
14 **witnesses and who are the civilian witnesses, right?**

15 A. Correct.

16 **Q. And you mentioned that civilian witnesses would**  
17 **be detained?**

18 A. Correct.

19 **Q. Are all civilian witnesses always detained**  
20 **before they're interviewed?**

21 A. Usually, yes. Because they're a witness to the  
22 criminal incident, so we're allowed to detain them until  
23 the detective gets the chance to talk to them and  
24 usually the CIRT members are called in, so it takes a  
25 while for them to get there. Patrol officers hold on to



1 these witnesses until we've had a chance to talk to  
2 them. Occasionally we'll have a witness that has to get  
3 to work or something of that nature. The patrol officer  
4 is then required to get a good identification, like a  
5 driver's license or something of that nature, and we'll  
6 follow up with that witness at a later time.

7 **Q. Where are these civilian witnesses detained?**

8 A. Usually in the back of a police cruiser.  
9 Sometimes they don't want to get in the back of a police  
10 cruiser, so they'll just be standing next to it.

11 **Q. Are they separated into individual police**  
12 **cruisers?**

13 A. Yes.

14 **Q. Why?**

15 A. You want to separate witnesses so they can't  
16 communicate and influence each other's idea of what  
17 happened.

18 **Q. Do these civilian witnesses who are detained can**  
19 **be detained for a number of hours before they're**  
20 **interrogated?**

21 A. Yes.

22 **Q. Are the civilian witnesses who are detained**  
23 **suspected of committing any crimes?**

24 A. Are they suspected of committing any crimes?  
25 Not that I'm aware of. Usually they're just witnesses

1 of the incident.

2 Q. So there's no reasonable suspicious or probable  
3 cause for any of these civilian witnesses, right?

4 A. Usually not, no.

5 Q. So why are you authorized to detain a civilian  
6 witness who is not accused of any crime for any period  
7 of time?

8 A. Because they have critical information in a  
9 critical investigation. By law we're allowed to detain  
10 them for a reasonable amount of time until a detective  
11 can speak with them.

12 Q. Do you ask these individuals whether or not they  
13 consent to being detained?

14 A. I personally do not.

15 Q. Do you instruct any of your CIRT officers to do  
16 so?

17 A. No. Usually this is patrol that has the first  
18 contact with these witnesses.

19 Q. Okay. Do you take any steps to ensure that the  
20 civilian witnesses are given the option to remain in  
21 detention or not?

22 A. I personally do not.

23 Q. Is it the policy of the division of police to  
24 detain all civilian witnesses in a police car until they  
25 can give statements?

1 MR. HALLORAN: Objection.

2 A. It is the policy of the division to detain  
3 witnesses, yes. Not necessarily in the back of a police  
4 car.

5 BY MS. GELSOMINO:

6 Q. Is this something that's different in police  
7 involved shootings than in other investigations?

8 A. No.

9 Q. So across the division witnesses to potential  
10 criminal activity are detained until the time that their  
11 statement is taken?

12 A. Yes.

13 Q. Why?

14 MR. HALLORAN: Objection.

15 A. Pretty much what I said before. They have  
16 critical information on a criminal investigation, so  
17 we're permitted by law to detain them until a detective  
18 can get that information from them.

19 BY MS. GELSOMINO:

20 Q. Where in the law does it give you the permission  
21 to do this?

22 A. Right offhand I couldn't quote you the section,  
23 but we have received this training from our legal  
24 bureau.

25 Q. What is a reasonable amount of time?

1 MR. HALLORAN: Objection.

2 A. Well, I would say a reasonable amount of time is  
3 the length of time it takes for the detectives to get  
4 there, be briefed and speak with them.

5 BY MS. GELSOMINO:

6 **Q. Is this the same procedure that's utilized**  
7 **regardless of the crime, the severity of the potential**  
8 **crime?**

9 A. I can only speak to homicide and felonious  
10 assault and police involved situations because that's  
11 what I've been doing. I don't know if they do this for  
12 misdemeanors investigations. I believe they're allowed  
13 to, but I don't know if they do. I can't speak to that.

14 **Q. Are police officer witnesses separated from each**  
15 **other?**

16 A. Yes.

17 **Q. How?**

18 A. Usually they stand by their cruiser and wait to  
19 be interviewed.

20 **Q. Are you aware of any time which police officer**  
21 **witnesses have gone back to a station together before**  
22 **interviews were conducted?**

23 A. Not really right off the top of my head, no.

24 **Q. During the time the civilian witnesses are**  
25 **detained are they free to leave?**

1 A. Yes. Well, let me rephrase that. We can detain  
2 them, even against their will, until a detective talks  
3 to them. However, we don't usually do that because we  
4 want the witnesses to talk to us. We want them to be  
5 happy. We want them to talk to us. If we keep them  
6 against their will, then, obviously, that's going to  
7 anger them and they're not going to be a cooperative  
8 witness and talk to us and give us information that they  
9 saw.

10 Usually if they wish to leave the patrol  
11 officers are to get a good contact or identity on them  
12 and get a good contact number. Then when the detectives  
13 get to the scene they'll give us that information and  
14 then we'll follow-up by trying to set up an interview  
15 with that witness.

16 **Q. In the shooting of Deaunte Bell-McGrew were any**  
17 **of the civilian witnesses given the option of leaving**  
18 **before giving a statement to the police?**

19 A. I don't know.

20 **Q. Were they held in police custody from the time**  
21 **of the shooting until the time they gave a statement?**

22 A. I'm not certain.

23 **Q. Did you ever give them any opportunity to**  
24 **consult with a lawyer before they gave a statement?**

25 A. I don't believe so, no.

1       **Q.           In the case of the shooting of Tyree King were**  
2       **any of the civilian witnesses given the option of**  
3       **leaving or not remaining in police custody until the**  
4       **time that they gave a statement?**

5       A.           I believe that the majority of the witnesses in  
6       that case were not even in custody. I believe the other  
7       individual that was with Mr. King was taken into  
8       custody, but he was also believed to be a suspect out of  
9       the earlier armed robbery. The other witnesses, I don't  
10      believe any of them were detained.

11      **Q.           Why not?**

12      A.           I don't know.

13      **Q.           What did you do to figure that out?**

14      A.           Well, what we did was there was information that  
15      there was a victim out of a robbery and we had his  
16      information, so we followed that up and contacted him.  
17      And there were some witnesses to that robbery, female  
18      witnesses. They remained at scene and they were  
19      interviewed. There were several people that live in the  
20      residences right there that backed up to that alley that  
21      were interviewed. There were some nuns that worked out  
22      of the building there on the north side of the scene  
23      that were interviewed as well. They just remained where  
24      they were, and when we were made aware of them being  
25      potential witnesses we went and interviewed them.

1       **Q.           No officer ever put any of those witnesses in**  
2       **the back of a police cruiser?**

3       A.        I don't specifically remember any of those  
4       witnesses with being in the back of a police cruiser,  
5       but that's possible.

6       **Q.           Why were the witnesses in Deaunte Bell-McGrew's**  
7       **shooting taken into police custody before their**  
8       **statement?**

9       A.        I don't have an answer for you there. I don't  
10      know why they were. Maybe there's a possibility that  
11      the officers thought they could be suspects.

12      **Q.           Which officers thought they could be suspects?**

13      A.        I don't know. I'm just throwing that out there  
14      as a potential.

15      **Q.           Well, you were the CIRT lead investigator at the**  
16      **time, correct?**

17      A.        Correct. What I can tell you is that when we  
18      got there that the two other individuals that had been  
19      in the vehicle were being detained in cruisers at that  
20      time.

21      **Q.           What did you do in response to learning the**  
22      **information that two civilian witnesses were being**  
23      **detained in cruisers?**

24      A.        I assigned detectives to go interview them.

25      **Q.           How long were they detained in police custody**

1     **before they were interviewed?**

2     A.           I don't know.

3     **Q.           Did you take any steps to ensure that they were**  
4     **held in police custody for a reasonable amount of time**  
5     **only?**

6     A.           I would say yes, in the fact that I always try  
7     and assign detectives to interview the civilian  
8     witnesses first so that they can be released in a  
9     reasonable amount of time.

10    **Q.           But you didn't take any actions to ensure that**  
11    **they were actually interviewed and released in a**  
12    **reasonable amount of time, right?**

13                         MR. HALLORAN:  Objection.

14    A.           I don't specifically recall, but I'm sure that  
15    them being the best witnesses that we had that night  
16    that they were interviewed first.

17    BY MS. GELSOMINO:

18    **Q.           Do you know whether any of them were taken to**  
19    **the station?**

20    A.           Being critical interviews I believe that they  
21    were taken to headquarters to be interviewed on video.

22    **Q.           So they were taken into police custody, put in**  
23    **the back of a police car and taken to police**  
24    **headquarters?**

25    A.           Correct.



1       **Q.           When they got to police headquarters were they**  
2       **free to leave?**

3       A.           Yes.

4       **Q.           Were they ever told that they were free to**  
5       **leave?**

6       A.           I'm not sure.

7       **Q.           Were they in handcuffs?**

8       A.           I'm not sure.

9       **Q.           Should they have been?**

10      A.           In handcuffs, I think for officer safety reasons  
11      they may have been placed in handcuffs initially, but  
12      then once they were determined they were not suspects of  
13      a crime, then they should have been released from  
14      handcuffs.

15      **Q.           Who made the determination that they were not**  
16      **suspects of a crime in the Deaunte Bell-McGrew case?**

17      A.           I don't specifically recall.

18      **Q.           Who should have made that decision?**

19      A.           Well, there's two different options with that.  
20      Based on once they found out what was going on a patrol  
21      officer might make the decision that they're a witness  
22      and not a suspect and remove the handcuffs, or when the  
23      detectives interviewed them and determined that they  
24      probably would have had their handcuffs removed before  
25      even speaking with the detectives in the interview room,

1 but I don't know for certain if that was the case.

2 **Q. When you get to the scene who takes command of**  
3 **the scene?**

4 A. I do.

5 **Q. So you are the top of the chain at the scene**  
6 **after a police involved shooting?**

7 A. Yep.

8 **Q. So any detention of witnesses would be your**  
9 **responsibility, right?**

10 A. Sure.

11 **Q. And ensuring whether or not civilian witnesses**  
12 **are unlawfully detained is your responsibility, right?**

13 MR. HALLORAN: Objection.

14 A. I would say that I make sure that when I am  
15 advised at the scene by patrol that there are civilian  
16 witnesses that have been detained, I immediately assign  
17 a detective, one of the CIRT detectives, to go interview  
18 them, and they are trained to make a decision on whether  
19 this person has information pertinent to the criminal  
20 case.

21 BY MS. GELSOMINO:

22 **Q. What does it matter if the person has**  
23 **information pertinent to the criminal case?**

24 A. Because we're allowed to detain them until we  
25 speak with them.

1 Q. My previous question related to your  
2 responsibilities, but the chain of command -- you're at  
3 the top of the chain of command on a scene. You're  
4 ultimately responsible for the conduct of your  
5 subordinates and the officers on the scene, right?

6 MR. HALLORAN: Objection.

7 A. I would say that I'm aware of.

8 BY MS. GELSOMINO:

9 Q. Who's responsible if not you?

10 A. I believe the officers are responsible for their  
11 own actions. If I'm not aware of it, there's not much I  
12 can do about it.

13 Q. You understand that supervisors can be  
14 responsible for the actions of their subordinates,  
15 right?

16 MR. HALLORAN: Objection.

17 A. Sure.

18 BY MS. GELSOMINO:

19 Q. Do you agree with me that it's your duty as a  
20 supervisor to properly supervise and monitor the  
21 behavior of your subordinates?

22 A. Yes.

23 Q. So if one of your subordinates on a scene is  
24 unlawfully detaining a civilian witness for hours, it's  
25 your responsibility to do something, right?

1 A. Well, when would that be unlawful?

2 **Q. Can you answer my question, first?**

3 A. I'm just trying to understand your question. So  
4 if a civilian witness has information that's critical to  
5 our investigation we're by law allowed to detain them  
6 until a detective speaks with them. And the key to that  
7 is we can detain them for a reasonable amount of time,  
8 and I believe the courts have decided that that  
9 reasonable amount of time is how long it takes the  
10 detectives to respond to be able to speak with them, and  
11 that occurs in every one of our CIRT investigations that  
12 their detained until we get there. We're advised of  
13 their presence and a detective goes and speaks with  
14 them. I would say that the civilian witnesses in each  
15 of our cases are detained lawfully for a reasonable  
16 amount of time.

17 **Q. If an individual was detained unlawfully on a**  
18 **scene, which is under your command, it would be your**  
19 **responsibility, right?**

20 MR. HALLORAN: Objection.

21 A. If I was aware of it, yes.

22 BY MS. GELSOMINO:

23 **Q. Have you ever done anything to ensure that the**  
24 **detectives who you assigned to talk to witnesses do so**  
25 **in a reasonable amount of time?**

1 A. Yes. As I said, when we get there and we're  
2 briefed and we're told what witnesses are there, both  
3 police and civilian, I always attempt to get the  
4 civilian witnesses interviewed first so they can be  
5 released. They're there. They probably don't want to  
6 be there. They're being inconvenienced by this, so I  
7 want to get them interviewed as quickly as possible.

8 **Q. And how do you do that?**

9 A. I assign a detective to go interview them.

10 **Q. Have you ever taken any steps after that point,**  
11 **after you assign a detective to ensure that that**  
12 **detective actually takes the statements and releases**  
13 **that civilian within a reasonable amount of time?**

14 MR. HALLORAN: Objection.

15 A. Yes, because that detective after that interview  
16 comes back and shares the content of that interview with  
17 me.

18 BY MS. GELSOMINO:

19 **Q. Immediately?**

20 A. Yes.

21 **Q. What if that detective determines that they want**  
22 **to conduct the interview back at the station?**

23 A. Well, then, that witness is transported to  
24 headquarters and interviewed there.

25 **Q. And how are you informed, if at all, of the**

1     **content of that investigation?**

2     A.         The detective will call me and let me know what  
3     the individual said.

4     **Q.         Who makes the decision whether or not to**  
5     **transport a civilian witness to the station to give a**  
6     **statement?**

7     A.         Usually it will be a joint decision between the  
8     detective assigned to interview that individual, the  
9     primary investigator and myself.

10    **Q.         In the case of the shooting of Deaunte**  
11    **Bell-McGrew, was there ever any reasonable suspicion or**  
12    **probable cause of the other two individuals that were**  
13    **inside the car with Deaunte Bell-McGrew made at any**  
14    **time?**

15    A.         I'm trying to remember. I do believe there was  
16    some drugs taken off of one of them, but I could be  
17    mistaken about that. Other than that I would say, no.

18    **Q.         Was anyone charged with any amount of drugs?**

19    A.         I don't recall.

20    **Q.         Are any of the police officer witnesses**  
21    **detained?**

22    A.         They are not allowed to leave the scene.

23    **Q.         Are they put into police cars?**

24    A.         They're usually in their police car.

25    **Q.         In the front of their own police car?**

1 A. Correct.

2 **Q. You say they're usually there.**

3 A. They may be standing next to their cruiser.  
4 They may be assigned to block off a roadway, but they're  
5 not allowed to leave the scene until a detective speaks  
6 with them.

7 **Q. At what point do they go to their cruisers?**

8 A. Once the scene is secured and they're not given  
9 a task at the scene. Usually the first responding  
10 officers are given a task of securing the scene. They  
11 may block a roadway or may be placed to stand over top  
12 of a weapon, something of that nature.

13 **Q. Even though they're police officer witnesses,**  
14 **right?**

15 A. Correct.

16 **Q. In many cases then, police officer witnesses are**  
17 **not sitting in their cars up until the point that they**  
18 **give a statement, right?**

19 A. Sometimes they are, yes. Sometimes they're not.

20 **Q. Why are the suspect officers permitted to leave**  
21 **the scene?**

22 A. The suspect officers are permitted to leave the  
23 scene with an officer support team member. This has  
24 been a long standing policy of the division of police,  
25 that this is the way that the involved officer is

1 handled in these cases. There's an officer support team  
2 member that's assigned to that officer, that is with  
3 that officer one hundred percent of the time when  
4 they're not with their attorney.

5 **Q. Why?**

6 A. I did not put that policy in place. I couldn't  
7 tell you why that was in place, but I think it was best  
8 to take them to a police facility. I think way back  
9 before I had anything to do with even homicide, I  
10 believe that the policy was more to take them to  
11 headquarters or do a Tim Horton's down the street. I  
12 think it's for the officer's mental wellbeing. The  
13 officer support team is made up of members that have  
14 been in critical incidents like this and can walk them  
15 through the process of what's expected of them, what's  
16 going to happen, and things of that nature.

17 **Q. Do you take any steps in a non-police involved**  
18 **shooting homicide investigation to consider the mental**  
19 **wellbeing of a civilian suspect?**

20 A. I would say that the civilian suspect is having  
21 issues, a mental breakdown or something of that nature,  
22 we do take them to a hospital and get them cleared  
23 before proceeding. So I would say in certain occasions,  
24 yes.

25 **Q. In the event of a mental breakdown which**



1 requires hospitalization, do you take any steps to  
2 consider the mental wellbeing of a civilian suspect like  
3 you do for a police officer homicide suspect?

4 A. We do not take the same steps, no.

5 Q. Why do you think that it is good to consider the  
6 mental wellbeing of a police officer after he was  
7 involved in a police involved shooting and before he  
8 gives a statement?

9 A. Because it is a traumatic event and it is a  
10 police action as well. We as the division have adopted  
11 policies, long-standing policies, to look at the officer  
12 as being involved in a police action until it's  
13 determined that they're not for the most part. I think  
14 that's why a lot of these policies are in place.

15 Q. So it is the policy of the department to look at  
16 the officer homicide suspect as having been involved in  
17 a police action rather than a crime up until the time  
18 that the Grand Jury makes a determination?

19 MR. HALLORAN: Objection.

20 A. I would say that there are procedures in place  
21 that treat the officer as if they were involved in a  
22 police action until it's proven that they're not.

23 BY MS. GELSOMINO:

24 Q. And when is it proven that they're not? At the  
25 Grand Jury?

1 A. Well, as I gave you an example before, if we had  
2 an officer that was on duty and ended up killing their  
3 spouse, went home during their tour, went home and  
4 killed their spouse and we caught them there, and from  
5 the preliminary investigative information that we have,  
6 that officer would be treated as a criminal suspect  
7 rather than someone who is involved in a police action.  
8 There are determinations that can be made based on the  
9 initial facts of the case as we see them.

10 **Q. Let's put that domestic violence incident aside.**  
11 **Let's talk about all the other kinds of police involved**  
12 **shootings that you're in charge of and are designated to**  
13 **talk about today. Okay?**

14 A. Okay.

15 **Q. You keep referring to the time that it's a**  
16 **police action until it's decided otherwise. When is it**  
17 **decided otherwise?**

18 MR. HALLORAN: Objection.

19 A. Officially it's the Grand Jury. When the Grand  
20 Jury decides to no bill the case, it's decided that it's  
21 not a criminal action. However, based on preliminary  
22 information at the scene we can get a gist as to whether  
23 this is going to be a crime or not.

24 BY MS. GELSOMINO:

25 **Q. Right. So you guys make a determination early**

1 at the scene as to whether or not you, the  
2 investigators, believe that this is a police action or a  
3 crime, right?

4 MR. HALLORAN: Objection.

5 A. We can. It doesn't effect the way that we  
6 conduct the investigation, but we can.

7 BY MS. GELSOMINO:

8 Q. Do you make that determination on the scene as  
9 to whether or not you believe it to be a criminal action  
10 or a police action?

11 MR. HALLORAN: Objection.

12 A. No. I do not make that determination.

13 BY MS. GELSOMINO:

14 Q. Do your investigators?

15 A. No.

16 Q. Do you or your investigators develop a gist at  
17 the scene as to whether or not you believe the police  
18 involved shooting to be a criminal action or a police  
19 action?

20 A. Of course.

21 Q. And you make that determination well before the  
22 time that the investigation is complete, correct?

23 MR. HALLORAN: Objection.

24 A. It's not a determination. It's, as you said, a  
25 gist.

1 BY MS. GELSOMINO:

2 Q. Okay. So you guys, you as the lead investigator  
3 and the CIRT team, at the scene develop a gist about  
4 your conclusions regarding the shooting well before the  
5 end of the investigation, right?

6 MR. HALLORAN: Objection.

7 A. Yes. We have an idea in mind about what  
8 happened based on the preliminary investigation.

9 BY MS. GELSOMINO:

10 Q. And you have that idea in your mind about what  
11 happened well before the time that the Grand Jury is  
12 presented with any information regarding the shooting,  
13 right?

14 MR. HALLORAN: Objection.

15 A. Yes.

16 BY MS. GELSOMINO:

17 Q. Now, I just want to be clear. When you say that  
18 you look at the officer as being involved in a police  
19 action, not a crime, until decided otherwise, is there  
20 any other --

21 A. I didn't say that. You said that.

22 Q. I wrote down a quote from you. Is there any  
23 other mechanism that can determine otherwise other than  
24 the Grand Jury?

25 MR. HALLORAN: Objection.

1 A. Is there any other mechanism? And we're talking  
2 about an officer involved situation that's a fatality?

3 BY MS. GELSOMINO:

4 Q. Yes.

5 A. So, yes.

6 Q. Tell me about it.

7 A. Well, in Franklin County they have a policy that  
8 they take every one of these to the Grand Jury.

9 Q. Right.

10 A. If we have something that happens in another  
11 county, such as Fairfield County, they have the option.  
12 It's our responsibility to present the case to the  
13 prosecutor in the county in which it occurred. They  
14 have the option to present it to the Grand Jury or just  
15 go ahead and file charges or determine that charges  
16 aren't warranted. That's up to the prosecutor's office.  
17 In Franklin County under Ron O'Brien they have a  
18 standing policy that each one of those would be  
19 presented to the Grand Jury.

20 Q. Okay. So in the case where it's not presented  
21 to the Grand Jury it's the prosecutor's office who  
22 determines whether or not an action will be charged as a  
23 crime, right?

24 A. Correct.

25 Q. And that's at the end of the CIRT investigation?

1 A. Correct.

2 Q. In the case of a non-fatality tell me how it's  
3 determined whether the action is deemed to be a police  
4 action or a criminal action?

5 A. The CIRT team would make that decision.

6 Q. Okay. So in that case is it ever presented to a  
7 prosecutor's office?

8 A. We do have that option to present to the  
9 prosecutor's office, but we also have the option to file  
10 charges ourself.

11 Q. Okay. So in the case of a non-fatality officer  
12 involved shooting the CIRT team itself can determine, or  
13 does determine, whether or not to deem the action  
14 criminal, right?

15 A. Yes.

16 Q. And in that case are you, as the head of the  
17 CIRT team, the final decision-maker?

18 A. Not necessarily, no. If we were to file  
19 criminal charges on an officer the entire chain of  
20 command would be involved in that.

21 Q. Has the CIRT team ever determined to bring  
22 criminal charges against an officer in a non-fatality  
23 officer involved shooting?

24 A. Since I've been involved as the team leader of  
25 the CIRT team the only incident where an officer was

1 charged criminally was Andrew Mitchell.

2 **Q. Tell me about Andrew Mitchell.**

3 A. Andrew Mitchell was an officer involved  
4 shooting. He was a vice officer and he picked up a lady  
5 who he believed to be a prostitute and he was effecting  
6 an arrest. He was stabbed and he fired shots at this  
7 individual killing her. And it was presented to the  
8 prosecutor's office, taken to a Grand Jury and that  
9 officer was indicted.

10 **Q. What were the conclusions of the CIRT**  
11 **investigation?**

12 A. The CIRT team did not believe that it was a  
13 criminal action.

14 **Q. Okay. But it was a fatality?**

15 A. It was.

16 **Q. So where did it go after it left the CIRT team?**

17 A. In fatal cases we are required to present it to  
18 the prosecutor in the county in which it occurred.

19 **Q. Which county that was?**

20 A. Franklin.

21 **Q. Okay. So in this case it was a fatality, you**  
22 **presented it to Franklin County and Franklin County**  
23 **presented it to the Grand Jury?**

24 A. Correct.

25 **Q. What charges was Mitchell indicted for?**

1 A. Murder.

2 Q. Anything else?

3 A. Not in Franklin County, no.

4 Q. Does the division of police disagree with the  
5 conclusions of the prosecutor's office in this case?

6 A. I can't speak for the division.

7 Q. You're here to speak for the division. You've  
8 been designated by the City of Columbus to speak for the  
9 City of Columbus regarding this. Is it the position of  
10 the City of Columbus that Andrew Mitchell did not commit  
11 a crime?

12 A. I'm sorry. Was this one of the cases that I was  
13 called here to testify to?

14 Q. Yeah. You've been called here to testify on  
15 every case since 2005.

16 A. I will tell you my personal opinion is it was a  
17 justifiable police shooting.

18 Q. Based on what?

19 A. Based on the facts of the case.

20 Q. Well, what facts of the case leads you to  
21 testify today on behalf of the City of Columbus that  
22 Andrew Mitchell was involved in a justified police  
23 shooting?

24 MR. HALLORAN: Objection.

25 A. So, Detective Mitchell was acting within the



1 scope of his duties. He'd been critically injured by a  
2 suspect and was in fear of his life at the time that he  
3 fired his weapon to stop that action from occurring.  
4 For those reasons I believe that he was acting within  
5 the scope of his duties, so therefore, was not a  
6 criminal case.

7 BY MS. GELSOMINO:

8 **Q. Do you believe that he violated any policies?**

9 A. Administrative policies, yes, I do believe he  
10 violated some administrative policies.

11 **Q. Which policies did he violate administratively?**

12 A. There were certain policies that they have. He  
13 should have waited for his back up to have gotten there  
14 before starting to effect the arrest. And, you know, I  
15 think that's pretty much -- administrative policy wise,  
16 I think that's pretty much the only thing that he did  
17 wrong.

18 **Q. So when the CIRT investigation -- well, you said**  
19 **that the CIRT investigation concluded that Mitchell did**  
20 **not commit any crime, right?**

21 A. Correct.

22 **Q. Does the CIRT team make conclusions or**  
23 **recommendations?**

24 A. As to whether someone committed a crime or not  
25 in nonfatal cases, we do. In fatal cases we do not. We

1 send it to the prosecutor's office.

2 **Q. Right. So this being a fatal case, why did the**  
3 **CIRT team come to a conclusion that he had not committed**  
4 **a crime?**

5 A. We didn't write a conclusion in the  
6 investigative packet. We send it to the prosecutor's  
7 office. You were asking me for my opinion.

8 **Q. No. I'm asking you for your testimony as a**  
9 **30(b)6 deponent?**

10 A. The CIRT's opinion.

11 **Q. Pardon?**

12 A. You're asking me whether I believed it to be a  
13 crime, and I said I did not.

14 **Q. That was the opinion of the CIRT team at the**  
15 **conclusion of the investigation into the death of Donna**  
16 **Castleberry?**

17 A. We did not render an opinion in that CIRT  
18 package. It was given to the prosecutor's office to  
19 present to the Grand Jury.

20 **Q. I understand that. But was that the position of**  
21 **the CIRT team at the conclusion of the investigation?**

22 MR. HALLORAN: Objection.

23 A. It was the position of -- if you asked us what  
24 our position was, I would say yes. Was it written into  
25 the investigative package, no.

1 BY MS. GELSOMINO:

2 Q. Okay. Was the position of the division of  
3 police at the conclusion of the CIRT investigation that  
4 Mitchell did not commit any criminal activity when he  
5 fatally shot Mrs. Castleberry?

6 MR. HALLORAN: Objection.

7 A. I can't really speak as to the position of the  
8 division of police unless you're considering my position  
9 to be that, if that makes sense.

10 BY MS. GELSOMINO:

11 Q. You understand that your testimony today is the  
12 testimony of the City of Columbus in this case?

13 MR. HALLORAN: Objection.

14 A. I understand.

15 BY MS. GELSOMINO:

16 Q. Okay. What was your involvement in the  
17 investigation into the homicide of Ms. Castleberry?

18 MR. HALLORAN: Objection. It's beyond  
19 the scope. Irrelevant.

20 A. I was the CIRT team leader and responded to the  
21 scene of that investigation.

22 BY MS. GELSOMINO:

23 Q. Okay. At the conclusion of the investigation  
24 before it's handed over to the prosecutor's office, in  
25 this case with Andrew Mitchell, did anyone else in the

1 **division of police review the investigation?**

2 A. I'm not sure. I know that the chief reviewed  
3 the investigation. I don't recall whether it was before  
4 or after it was given to the prosecutor.

5 **Q. Okay. How is this investigation handed over to**  
6 **the prosecutor's office, or how was it handed over?**

7 A. We make a copy of the completed case package and  
8 then we take it over to the prosecutor's office.

9 **Q. Like hand-deliver a physical copy?**

10 A. Yes.

11 **Q. Who did that?**

12 A. I did.

13 **Q. Who who did you drop it off to?**

14 A. Ron O'Brien and Jimmy Lowe.

15 **Q. What was the conversation between you, Ron**  
16 **O'Brien and Jimmy Lowe when you dropped off this packet?**

17 A. Basically we told them what we thought occurred  
18 during the investigation based on the facts of the case  
19 and left it in their hands.

20 **Q. Who is we?**

21 A. Myself and I think Detective Greg Shepherd was  
22 involved in that investigation, I believe.

23 **Q. Was he the lead?**

24 A. Yes.

25 **Q. How long was your meeting with O'Brien and Lowe?**

1 A. I don't recall.

2 Q. Did you tell O'Brien and Lowe the informal  
3 position of the CIRT team in the division of police at  
4 the time?

5 A. I believe when they asked my opinion I did so,  
6 yes.

7 Q. What did you tell them?

8 A. That we believe that it was a -- that Detective  
9 Mitchell was acting within the scope of his duties.

10 Q. What did they say in response?

11 A. I don't believe they took a position at the  
12 time.

13 Q. So has the CIRT team ever concluded formally or  
14 informally that an officer committed a criminal act when  
15 they used deadly force?

16 A. Has the CIRT team ever concluded formally or  
17 informally that an officer committed a criminal act? I  
18 would say no, for the length of time that I've been  
19 here.

20 Q. And that is since 2009?

21 A. Well, yeah. I was shadowing. I don't believe  
22 any occurred then either.

23 Q. Okay. So at least since 2009 CIRT has never  
24 taken the position that any officer has committed a  
25 criminal act when using deadly force, right?

1 MR. HALLORAN: Objection.

2 A. I believe so.

3 BY MS. GELSOMINO:

4 Q. Okay. Other than this one example with  
5 Mitchell, have criminal charges ever been lodged against  
6 any division of police officer for using deadly force?

7 MR. HALLORAN: Objection.

8 A. I don't know the answer to that. I don't  
9 believe so. Certainly not since 2009. Before then,  
10 maybe. I don't know.

11 BY MS. GELSOMINO:

12 Q. Okay. So since 2009 no division of police  
13 officer has ever been charged with a crime for using  
14 deadly force?

15 A. I believe so, no.

16 Q. Did you -- what was your relationship with  
17 Andrew Mitchell?

18 MR. HALLORAN: Objection.

19 A. My relationship with Andrew Mitchell? I knew  
20 Andrew Mitchell. We were in the same class together in  
21 the academy and we never worked together. He did work  
22 homicide, but he worked third shift for a brief period  
23 of time, but I had very little contact with him after  
24 the academy.

25 BY MS. GELSOMINO:

1 Q. Okay. In every case of a fatal shooting do you  
2 hand-deliver the documents to the prosecutor's office  
3 and have a conversation with the prosecutor regarding  
4 the position of the CIRT team?

5 A. No. Usually the primary investigator has that  
6 responsibility, takes the package over to the  
7 prosecutor's office.

8 Q. Why don't you do it with the primary  
9 investigator?

10 A. It's just not the way that we do it.

11 Q. So why did you do it in the Mitchell case?

12 A. Well, in the Mitchell case I actually was  
13 designated the primary in that case and Detective  
14 Shepherd was secondary in that case.

15 Q. Why were you primary?

16 A. I think because they wanted to make sure that  
17 there was no conflicts with anybody that had worked  
18 around Andy in homicide. They didn't want to have any  
19 conflict of interest there. Since I had very little  
20 contact with Detective Mitchell they had me take over  
21 the investigation.

22 Q. Who's they?

23 A. Our chain of command.

24 Q. Who ordered you to do that?

25 A. The Chief of Police, Thomas Quinlin.

1 Q. Have you ever been designated primary on any  
2 other CIRT investigation?

3 A. No.

4 Q. In the case of the shooting death of Deaunte  
5 Bell-McGrew, did you participate at any point in any  
6 conversations with the prosecutors?

7 A. I don't recall. That was a long time ago.

8 Q. Did you testify at the Grand Jury?

9 A. No.

10 Q. In the shooting death of Tyree King, did you  
11 participate at any point in any conversations with  
12 prosecutors?

13 A. I don't recall. I don't believe so.

14 Q. Did you testify in the Grand Jury?

15 A. I did not.

16 Q. In the shooting of James England, did you at any  
17 point participate in any conversations with prosecutors?

18 A. I don't believe so.

19 Q. There was a Grand Jury?

20 A. No. I don't believe so on that because it was a  
21 nonfatal incident.

22 Q. And the CIRT team concluded that there was no  
23 criminal activity, right?

24 A. Correct.

25 Q. In that case even though it was nonfatal, CIRT



1     **knew, as the leader of CIRT, the department could have**  
2     **taken it to a prosecutor to discuss potential criminal**  
3     **activity, right?**

4     A.       Yes.

5     **Q.       And you choose not to?**

6     A.       I don't believe so.

7     **Q.       Why?**

8     A.       Because it was our determination that he was  
9     acting within the scope of his duties and it didn't  
10    constitute a criminal act.

11   **Q.       All right. I want to go back to the scene after**  
12   **a police shooting. We got to the point where you were**  
13   **on scene, the CIRT members are on scene and all the**  
14   **civilian witnesses have been detained. What happens**  
15   **after that point?**

16   A.       So, once we've been briefed and we're aware of  
17   who all the witnesses are and where they're located, as  
18   I said before, I divvy out the assignments. Detectives  
19   respond out there to interview the civilian witnesses,  
20   the police witnesses. One detective is in charge of the  
21   crime scene and we just begin our investigation from  
22   that point.

23   **Q.       Tell me about the investigation.**

24   A.       Well, it depends. Each investigation is  
25   different. For example, if it occurred inside a

1 residence and we believe that the civilian suspect has  
2 the right to privacy, then we get a search warrant. If  
3 it's an outside scene we can call crime scene and have  
4 them head that way to begin processing the scene.

5 There's different decisions there based on the facts of  
6 each individual case that determines how we proceed.

7 **Q. Okay. When do you know that it's time to wrap**  
8 **up the scene part of an investigation?**

9 A. So the scene is considered cleared after all of  
10 the witnesses have been interviewed. All the witnesses  
11 that we know of have been interviewed. All of the  
12 canvas has taken place. You know what a canvas is?

13 **Q. I do, but why don't you explain it to me.**

14 A. A canvas is basically we assign detectives to  
15 knock on doors of the residents that are in close  
16 proximity of the scene, anybody that could have had a  
17 view of the scene and see if there's any witnesses.  
18 Once all of that is concluded and the crime scene is  
19 finished, the crime scene search unit is completed with  
20 their processing of the scene, then the scene is  
21 cleared.

22 **Q. Is there ever any follow-up on the canvas?**

23 A. Yes. Occasionally you'll get somebody that will  
24 answer the door and say that somebody was there during  
25 the incident but they had to leave, so we'll have to

1 follow-up and talk to that person at a later date, or  
2 you'll get no answer. Sometimes we'll recanvas and go  
3 back out at approximately the time the incident occurred  
4 and knock on the doors that initially we had no answer  
5 at to see if anybody is home at the time. So we do go  
6 back out and recanvas from time to time.

7 **Q. Who makes that decision to go back and recanvas?**

8 A. The primary investigator.

9 **Q. Do you oversee the actions of the primary**  
10 **investigator?**

11 A. I do.

12 **Q. How so?**

13 A. Well, I have the primary investigator keep me  
14 informed on what's going on in the case and make  
15 decisions on how we could do additional follow-up, et  
16 cetera.

17 **Q. How do you do that?**

18 A. Just by talking to the detective, going over the  
19 facts, what they're doing.

20 **Q. Do you ever get any summary memos or anything,**  
21 **e-mail updates, text message updates regarding the**  
22 **status?**

23 A. Not really. Usually it's face-to-face because  
24 we work there in the office together. We will get  
25 informational summaries on everything that the

1 detectives do. We will get an informational summary  
2 that will be placed in the investigative package.

3 **Q. Okay. So then, the scene is clear. Then what**  
4 **happens in the investigation next?**

5 A. In the investigation after that then it really  
6 determines on a case-by-case basis as to what needs to  
7 occur. You know, we could do follow-up with other  
8 witnesses. We can do recanvas. The primary detective  
9 will complete all the labs for the case, send those to  
10 the crime lab for testing the evidence collected and  
11 things of that nature.

12 **Q. How long does a CIRT investigation take?**

13 A. It depends. Sometimes it takes a long time and  
14 sometimes it doesn't take very long at all. Most of  
15 them lean towards a long time. I mean, we don't get  
16 autopsy reports for about 12 weeks. Sometimes it's four  
17 to eight weeks for lab results to come in, so it's a  
18 process.

19 **Q. Is there any other part of the investigation**  
20 **that you haven't told me about yet?**

21 A. I'm sure there's a lot. There's a lot of facets  
22 on these investigations.

23 **Q. What else haven't you told me about it?**

24 A. When crime scene gets there we walk through and  
25 determine what they're going to do. Often times they'll

1 have Leica scanners and we'll determine whether Leica is  
2 necessary or discuss how many scans they're going to  
3 take and things of that nature. There's a processing of  
4 the officer. I told you a little bit about that.

5 When crime scene gets to the scene that's when  
6 we call for the officer to come back and usually we'll  
7 just have a patrol officer that's on the scene call the  
8 substation and tell them we're ready for them to come  
9 back. An officer support team member will transport  
10 back to the scene and we'll do public safety questions  
11 that we have agreed with FOP attorneys to ask them.  
12 Usually it's three questions. Are you injured in any  
13 way? Is there any evidence out here we wouldn't know  
14 about it, unless you told us? For example, if it's just  
15 an officer and suspect in an alley and a suspect throws  
16 drugs into a dumpster, if the only witness to this  
17 incident is the involved officer, we need to know about  
18 that so crime scene can recover evidence. So we ask  
19 that. And then the final question is kind of two parts.  
20 Where were you standing and what direction did you fire?  
21 As I explained earlier, that's so crime scene can look  
22 for shell casings and follow the path of projectiles.

23 **Q. Is that conversation with the officer suspect**  
24 **and his lawyer recorded in any way?**

25 **A. No.**

1       **Q.           Do you ask about any further details about what**  
2       **happened?**

3       A.           It depends on the case. If there is still a  
4       suspect at large, then we'll ask for a description of  
5       the suspect, or maybe there was a suspect vehicle that  
6       got away. We'll ask for that information so we can air  
7       that on the radio so the officers can be looking for the  
8       suspect or their vehicle in the area. Sometimes I will  
9       ask the attorney instead of the officer if the suspect,  
10      civilian suspect, fired at them so we could look for  
11      that kind of evidence, but I leave answering that  
12      question up to the attorneys.

13      **Q.           Why?**

14      A.           Because it's not one of the three questions that  
15      we've informally agreed to in the public safety  
16      questions.

17      **Q.           Tell me about this agreement with the FOP to**  
18      **only ask officer suspects three questions on the scene.**

19      A.           So way before my time on CIRT it was agreed with  
20      the FOP that they would answer these public safety  
21      statements as long as they were not recorded and not  
22      documented and remained informal.

23      **Q.           Is that a formalized agreement with the FOP?**

24      A.           No.

25      **Q.           The division of police has just decided to**

1     **function this way, not to ask the officer any**  
2     **substantive questions regarding the justification of the**  
3     **shooting on the scene?**

4     A.       No. The statement comes later. We ask them to  
5     make a statement as soon as they get on the command bus.  
6     The walk-through occurs before that. And these public  
7     safety statements are necessary for us to look for  
8     evidence at the crime scene. So, we've agreed not to  
9     document those in order to get that information to  
10    further our criminal investigation.

11    **Q.       Wouldn't it also be essential for information to**  
12    **further your investigation to ask the officer questions**  
13    **regarding the details of the shooting?**

14    A.       Absolutely. I would love to do that, but they  
15    have their attorney with them and their attorney  
16    wouldn't permit it.

17    **Q.       Have you ever asked the questions to try to ask**  
18    **them? Maybe the attorney would permit it.**

19    A.       Yeah. Every time. We have a standardized  
20    protocol that we go through. And we go through their  
21    name, badge number, assignment, what duty hours they  
22    were working that day, if they were working with a  
23    partner or anything like that. We ask if they wish to  
24    give a statement with regard to the incident --

25    **Q.       So basically --**

1 A. -- that night.

2 Q. -- you talk to the officer with their attorney  
3 regarding where things happened, right? You ask them  
4 three questions?

5 A. Correct.

6 Q. And then you give them the opportunity to make a  
7 statement, which they refuse to do, correct?

8 A. Correct.

9 Q. And it isn't until days later or some time  
10 thereafter that the officer gives a statement along with  
11 their lawyer, right?

12 A. Correct.

13 Q. What period of time after the shooting can the  
14 officer wait before deciding to give a statement?

15 A. We try to get them in as soon as possible. I  
16 believe the time for a long time it was seven to 14  
17 days.

18 Q. What's the policy or practice within the  
19 division of police, within what period of time does the  
20 division require the officer to give a statement?

21 A. Seven to 14 days.

22 Q. So an officer can wait a full seven to 14 days  
23 to consult with their lawyers before they give any kind  
24 of statement regarding the details of the shooting?

25 MR. HALLORAN: Objection.



1 A. That was the policy. It has recently changed.  
2 I believe it's seven days now. We want to get them in  
3 within seven days.

4 BY MS. GELSOMINO:

5 Q. Is it the policy now that they must give a  
6 statement within seven days?

7 A. Yes.

8 Q. Does it ever take longer?

9 A. Yes. It can take longer. We've had incidents  
10 where the attorney was unavailable, or I was  
11 unavailable. We had one occasion with the involved  
12 officer was called out to military service. There are  
13 different occasions where it may take longer.

14 Q. What's the longest period of time that it's  
15 taken for an officer to give a statement after using  
16 deadly force?

17 A. I couldn't say. I don't recall.

18 Q. Could it be more than a month sometimes?

19 A. I think the longest was the officer that was  
20 activated in the military, but I couldn't tell you how  
21 long that was.

22 Q. Was there any effort if that case to have him  
23 give a statement before he shipped off to military?

24 A. I believe so, yes.

25 Q. Why didn't that happen?

1 A. We're kind of at whim of the attorney. They  
2 have a right not to talk to us at all. If they're going  
3 to come in and give me a written statement, I'm  
4 obviously going to accept that.

5 **Q. Now, if an officer elects not to talk to you in**  
6 **the course of a criminal investigation are there any**  
7 **administrative and employment consequences of that?**

8 A. Not where CIRT is concerned.

9 **Q. How about where the division is concerned?**

10 A. So the way that works is CIRT conducts the  
11 criminal investigation, so we're cognizant of their  
12 Miranda warnings and their right not to give a  
13 statement, a right to have counsel, and if they choose  
14 to exercise those like in a civilian suspect that  
15 lawyers up, we don't get that statement. Now, at the  
16 conclusion of the criminal investigation, then there's  
17 going to be an administrative investigation and they can  
18 utilize Garrity and compel them to talk based on their  
19 employment.

20 **Q. Has CIRT ever asked that a police officer**  
21 **suspect make a more detailed statement at the scene?**

22 MR. HALLORAN: Objection.

23 A. I'm not really sure what you mean. As I stated  
24 earlier, there may be -- based on the facts of the case,  
25 there may be an outstanding suspect or suspect vehicle

1 or something like that, and then I'll ask the attorney  
2 if they're comfortable giving me that information to  
3 further the case. Like I said, that takes place before  
4 we request the statement of the incident.

5 BY MS. GELSOMINO:

6 **Q. Right. At the scene walk-through -- do you call**  
7 **it a walk-through?**

8 A. Yes.

9 **Q. During a walk-through has CIRT ever requested an**  
10 **officer explain the reasons why he or she shot?**

11 A. No.

12 **Q. Why not?**

13 A. Because that's not within the parameters of the  
14 agreement of the FOP attorneys.

15 **Q. Has the agreement with the FOP attorneys been**  
16 **memorialized anywhere?**

17 A. I don't believe so, no.

18 **Q. How do you know about it?**

19 A. Just the way that I was trained by Sergeant  
20 Sagstetter. This policy was in place long before I took  
21 over the team, and dealing with the FOP attorneys  
22 they're versed with it as well. That's the way we do  
23 things.

24 **Q. And you've never made any effort to change the**  
25 **way you do things?**

1 MR. HALLORAN: Objection.

2 A. Not specifically with the walk-through.  
3 Basically because I believe there wouldn't be any point  
4 to it. The FOP attorneys aren't going to agree to the  
5 change in that.

6 BY MS. GELSOMINO:

7 **Q. So it would just be futile because the FOP**  
8 **attorneys wouldn't cooperate in giving the information**  
9 **earlier?**

10 MR. HALLORAN: Objection.

11 A. No. I don't think so.

12 BY MS. GELSOMINO:

13 **Q. Okay. So at this point have you told me**  
14 **everything that happens on the scene before it's**  
15 **cleared?**

16 A. Well, there's more with the processing of the  
17 officer. Once we do that walk-through they're taken to  
18 the command bus and then crime scene will photograph  
19 them basically in what they were wearing at the time of  
20 the incident, and then we will do a determination of  
21 rounds. We'll take the weapon that they used and count  
22 the rounds so we know how many are missing so we can  
23 tell crime scene what to look for. And then they're  
24 given a replacement weapon, and at that time we do the  
25 initial statement with them and try to get a statement

1 of what happened from them.

2 At that point if the attorneys say no, they are  
3 free to go. They can leave with their officer support  
4 team member and they leave the scene. After that the  
5 assistant sergeant will interview the officer support  
6 team member. We want to ensure that they didn't discuss  
7 the case at all, that the involved officer didn't give  
8 them any facts of the case because they're not supposed  
9 to talk about that. They're trained that way. Then we  
10 keep doing what we're doing.

11 I'll meet up with the detectives, they'll come  
12 back, regroup and discuss what all the witnesses had to  
13 say and then go from there. Maybe one witness will say  
14 that somebody else saw something and they're not there  
15 anymore and we have to follow-up with that witness, so  
16 we'll try and find that other person. I'll send a  
17 detective out to do that. At this point I might send  
18 detectives to the addresses of the people who called in  
19 on the initial 911 call and things of that nature. I'll  
20 meet with crime scene and see if they've got everything  
21 that they need.

22 We will communicate with crime scene and the  
23 scene detective and crime scene will determine the best  
24 time to call the coroner's office if it's a fatality,  
25 and then the coroner's office will come out and do their

1 thing. And once the body is transported to the morgue,  
2 I'll again confer with crime scene, see what else they  
3 have left to do, and usually at that point the scene is  
4 cleared.

5 **Q. And then, anything that you haven't told me**  
6 **about in terms of the remainder of the investigation?**

7 A. The remainder of the investigation just based on  
8 the preliminary information that we've received,  
9 follow-up and deal with information from witnesses, and  
10 then further follow-up will occur when we get some of  
11 our lab results back. If it's a fatal, the primary  
12 investigator, or someone that he designates, will attend  
13 the autopsy and call the coroner's office and set that  
14 up. It's usually the next day or a couple days.  
15 Sometimes they're backed up, but they attend autopsy.  
16 Within 24-hours the lead detective has to put out a  
17 summary index. That's usually just numbering the  
18 summaries that everyone has told them of what witnesses  
19 they interviewed so when they do their informational  
20 summary they can attach a number to it. They start  
21 typing their informational summaries from their  
22 interviews and we go from there.

23 **Q. Has there been discussion between the CIRT team**  
24 **and the coroner's office regarding how police involved**  
25 **shootings are handled?**

1 A. Not really. They're supposed to make a police  
2 involved shooting autopsy a priority. Other than that I  
3 think they pretty much just handle it the same as any  
4 other death.

5 **Q. Has the division of police every communicated to**  
6 **the coroner's office in any way that only limited**  
7 **information should be shared regarding police involved**  
8 **shootings?**

9 A. We don't have any control over that.

10 **Q. My question is whether the division of police or**  
11 **anyone within it has ever communicated anything like**  
12 **that to the coroner's office?**

13 A. Not officially. I mean, I believe I've had  
14 discussions with Jan Gorniak over the years about that,  
15 and they are pretty much tied to whatever their policy  
16 is on releasing information to the public, to the media,  
17 so we don't have any control over what they release.

18 **Q. Who's Jan Gorniak?**

19 A. She was the coroner. She's no longer the  
20 coroner. She was the coroner before Dr. Ortiz.

21 **Q. Have you or anyone else within the division have**  
22 **any other communication with anyone in the coroner's**  
23 **office regarding information release?**

24 A. Not that I can recall.

25 **Q. Or regarding the procedure in handling police**

1 **involved shootings in any way?**

2 A. Not that I recall.

3 **Q. Tell me about your conversations with Jan**  
4 **Gorniak.**

5 A. Over the years, and not necessarily specifically  
6 related to PIS, but even like homicides, there was a  
7 couple of occasions where information was released to  
8 the media that only the murderer would know, and those  
9 are the kind of things that we want to keep back because  
10 that's how we'll determine if we have the right suspect  
11 based on knowledge that only they should have of the  
12 crime scene. If that information gets out ahead of time  
13 in an ongoing investigation, that would be detrimental  
14 to the case. We had discussions about, I don't know  
15 what your policies are, but you have to be careful about  
16 what you release. If it's something that could be  
17 detrimental to the case, it's not good for anybody.  
18 It's not good for the community, it's not good for the  
19 victim's family, the coroner's office reputation. We  
20 did have discussions on those lines. I don't know if it  
21 influenced them at all.

22 **Q. Were your conversations at any point related**  
23 **specifically to police involved shootings?**

24 A. I can't really specifically recall them being  
25 about police involved shootings, no.



1       **Q.           How could the release of information related to**  
2       **a police involved shooting from the coroner's office**  
3       **negatively impact the investigation of CIRT?**

4       A.           I would say just basic investigatory practices.  
5       When a criminal investigation is ongoing you don't want  
6       to release specific details of an investigation. For  
7       instance, we don't release where somebody is shot, what  
8       body parts or what calibers of weapons were used or  
9       things of that nature. Those are all specific details  
10      to the investigation that shouldn't be public knowledge.

11      **Q.           Why?**

12      A.           Well, because then you have people -- for  
13      instance, if it gets out that a 9mm was used, then the  
14      family members are like, well, the person always carried  
15      a 40. It just muddies the waters of the investigation,  
16      so we try and keep specific details from being released  
17      to the public.

18      **Q.           Let's talk about specifically how any**  
19      **information released from the coroner's office would**  
20      **negatively impact the investigation of a police involved**  
21      **shooting.**

22      A.           That's what I'm saying. We would prefer they  
23      not release where a person was shot or how many times  
24      they were shot, or what caliber rounds were used,  
25      specific details such as that.

1       **Q.           But why?**

2                               MR. HALLORAN:  Objection.

3       A.           Because it may be pertinent to the investigation  
4       down the road.  We don't know how all the time.  It's  
5       just basic investigative practice that in an ongoing  
6       criminal investigation you keep specific details of the  
7       case not a matter of public knowledge.

8       BY MS. GELSOMINO:

9       **Q.           In a police involved shooting you already know**  
10      **how many times a person was shot, right?**

11      A.           We do, yes.

12      **Q.           How could it potentially impact an investigation**  
13      **if the public knows how many times a person was shot by**  
14      **the police officer?**

15      A.           I'm not saying that I know specifically how this  
16      would impact.  It's just a basic investigation practice  
17      that we don't want to release specific details of a  
18      case.

19      **Q.           Is there any fear within the division that**  
20      **releasing that type of information before the conclusion**  
21      **of the investigation would inflame public sentiment?**

22      A.           No.  I don't think that plays a role into it.  
23      It's really just basic investigation one-o-one.  You  
24      don't release specific details while it's an ongoing  
25      case.

1 Q. Is there any other information that the division  
2 of police has requested the coroner's office not to  
3 release in a police involved shooting?

4 A. Not that I'm aware of, no.

5 Q. So other than the location of the gunshots and  
6 the caliber of the weapon, is there anything else the  
7 division of police asked the coroner's office to  
8 maintain confidential from the public?

9 A. We don't ask them really. We could discuss the  
10 merits of keeping this confidential, but we don't have  
11 any control over what they actually release.

12 Q. I understand that. But what else have you  
13 requested or discussed the merits of keeping  
14 confidential?

15 A. I don't believe anything else. I don't want to  
16 disturb your roll, but at some point I'd like to take a  
17 restroom break.

18 Q. I'm ready for one too, actually. Let me just  
19 ask you this: Who else was present in those  
20 conversations with Jan?

21 A. I don't recall. It was probably just the two of  
22 us.

23 Q. In-person or over the phone?

24 A. In-person.

25 Q. Have you ever talked to anyone else from the

1 **office?**

2 A. I don't believe so, no.

3 MS. GELSOMINO: Okay. Let's take a  
4 break.

5 - - - -

6 (Thereupon, an off-the-record discussion was held.)

7 - - - -

8 BY MS. GELSOMINO:

9 **Q. So you left off at like the completion of the**  
10 **CIRT investigation. Is there anything else about the**  
11 **way that these cases are investigated that you haven't**  
12 **told me about?**

13 A. Maybe the formal statement.

14 **Q. Okay. At some point the officer gives a formal**  
15 **statement. I think you referenced that. Anything else?**

16 A. I think that's about it. There's multifaceted  
17 things that come up in unique cases, but that's pretty  
18 much the way that things go.

19 **Q. At the conclusion then of the investigation,**  
20 **what happens?**

21 A. Well, at the conclusion of the criminal  
22 investigation into either the officer suspect or the  
23 civilian suspect when the criminal is all adjudicated  
24 and we send that package for our involved officers for  
25 CPD, the package would then go to the Firearms and Death

1 Review Board. If, say, we do a package for another  
2 agency, we would send it to that agency for their review  
3 for their administrative policies.

4 **Q. Okay. Let's focus on Columbus shootings.**

5 **A. Okay.**

6 **Q. Does it go to the Firearms Review Board just**  
7 **like after the determination about criminal charges is**  
8 **made?**

9 **A. No. When it's adjudicated.**

10 **Q. What does that mean?**

11 **A. When it's gone through the court system and is**  
12 **completely over criminally.**

13 **Q. Okay. So like if a Grand Jury no bills it, then**  
14 **it can go to the FRB?**

15 **A. That's if we didn't charge a civilian suspect.**  
16 **On a fatal as soon as it's done with the Grand Jury then**  
17 **it goes to the Firearms Death Review Board. In the case**  
18 **that it's a nonfatal it will also have to wait for the**  
19 **civilian suspect's case to be adjudicated.**

20 **Q. Before it's passed on to the prosecutor, is**  
21 **there any kind of like wrap up that you do or any of the**  
22 **officers do? Do you like do a case summary or have a**  
23 **meeting of some kind before you pass it along?**

24 **A. No. It is reviewed by the chain of command.**

25 **When the package is totally completed it will come to me**

1 and I will start from the very beginning and go through  
2 the package and review it. Then I'll give it to my  
3 lieutenant who will also review it. If the commander  
4 wants to review it he can, and so can the deputy chief  
5 and the chief.

6 **Q. And that's all before the FRB looks at it?**

7 A. That's before the Firearms Review Board looks at  
8 the case.

9 **Q. What's the purpose of this initial chain of**  
10 **command review?**

11 A. Pretty much just to make sure that literally the  
12 I's are dotted the T's are crossed. We correct grammar,  
13 misspellings, punctuation. If anything was forgotten to  
14 be done in the investigation we get that wrapped up. I  
15 usually will give the detective back a to-do list of  
16 things I think should still be done and they give it  
17 back to me when it's done, and then I'll give it back  
18 and pass it on to the lieutenant.

19 **Q. Does the lieutenant have to sign off on it**  
20 **somehow?**

21 A. No. Nobody signs off on the review process.

22 **Q. Okay. Have you ever had anyone in the chain of**  
23 **command disagree with any of the parts of the**  
24 **investigation or the position of the CIRT team?**

25 A. Not in our CIRT chain of command, no.

1 Q. After it goes through the CIRT chain of command  
2 then where does it go?

3 A. The Firearms and Death Review Board.

4 Q. Does it go through the CIRT chain of command  
5 before or after the conclusion of the criminal  
6 adjudication?

7 A. After.

8 Q. Okay. So it never goes up the chain until all  
9 the criminal proceedings are finished?

10 A. Well, once the package is done, I've already  
11 reviewed it pretty much once, and then after it's  
12 adjudicated we add what's called a final progress that  
13 says what happened in the criminal case, what courtroom,  
14 they plead, sentenced, whatever, once that final  
15 progress is in there then it will go to the lieutenant.

16 Q. The CIRT lieutenant chain of command?

17 A. Yes.

18 Q. And then after that it goes to FRB?

19 A. Yes.

20 Q. Do you have any communication with FRB at the  
21 time of this transition?

22 A. Usually not. Well, no. Never at the time of  
23 the transition. What I do is I make three copies of the  
24 criminal investigation, one for each of the Firearms  
25 Review Board commanders, take those copies up to Nancy

1 Cameron, who is the deputy chief secretary, and she  
2 gives it to the Firearms Review Board commanders that  
3 were assigned. She also makes those assignments and  
4 gives it out to the Firearms Review Board commanders, so  
5 I don't have contact with them right then.

6 **Q. When do you have contact with them?**

7 A. Most of the time never. On a very rare occasion  
8 they'll have a question about something and they'll call  
9 back down and ask a question, and then I'll answer the  
10 question. That's pretty much the extent of it.

11 **Q. In the investigation to the shooting death of**  
12 **Deaunte Bell-McGrew, did anyone from the FRB have any**  
13 **questions for you?**

14 A. Not that I recall.

15 **Q. How about in the Tyree King investigation?**

16 A. Not that I recall.

17 **Q. In the James England investigation?**

18 A. Not that I recall.

19 **Q. Okay. What happens to it, then?**

20 A. Well, there's three commanders that are assigned  
21 to the Firearms and Death Review Board, and they will  
22 make a determination. If there's descent amongst the  
23 Firearms Review Board, then the descending commander has  
24 to write a letter detailing why they descent. That's  
25 why there's three. The majority kind of rules in that



1 case. And then they'll rule it. There's four ways they  
2 can go with it, unintentional in-policy, unintentional  
3 outside of policy, intention in-policy, and intentional  
4 outside of policy.

5 **Q. Okay.**

6 A. Once they've ruled on that they'll send it to  
7 the chain of command of the involved officer and that  
8 chain of command gets to review the package as well. If  
9 they agree with the Firearms Review Board, then it's  
10 done. The case is over and it gets filed at Internal  
11 Affairs. Internal affairs has that option of also doing  
12 a concurrent administrative investigation. If they  
13 descent and don't agree with the Firearms Review Board's  
14 conclusion, then it will go to the discipline grievance  
15 office for review, and then it will go to the chief and  
16 the chief makes the final decision as the tie-breaker.

17 **Q. Okay. The concurrent investigation with IA, how**  
18 **did that work?**

19 A. Basically what they'll do is if the chain of  
20 command's or the Firearms Review Board raised any  
21 administrative issues that maybe didn't pertain to the  
22 case, were outside of the case but were still an  
23 administrative issue, or even pertaining to the case,  
24 Internal Affairs can open up an investigation and go  
25 from there and look at the administrative issues.

1 Q. Do you mean like if there was some kind of a  
2 policy violation other than violating the use of force  
3 policy?

4 A. Yes.

5 Q. Whose job is it to investigate violations of  
6 other policies other than the use of force policy in the  
7 context of a police involved shooting?

8 A. Those would be left up to that officer's chain  
9 of command. In the occasions like I described earlier  
10 like there might be a tactical error, but wasn't  
11 out-of-policy, that's up to their chain of command to  
12 then decide, well, they didn't do the greatest job with  
13 their tactics in this, so I'd like to have them go back  
14 to DTU or whatever and get retrained. So it's really up  
15 to the chain of command of the officers to decide on  
16 administrative issues.

17 Q. How is an IA investigation triggered?

18 A. They're supposed to -- basically when a police  
19 involved situation occurs Internal Affairs essentially  
20 opens up a concurrent investigation. And then when they  
21 get the CIRT package, they review the CIRT package and  
22 if there's anything they want to address they can  
23 address it at that point.

24 Q. They don't get the CIRT package until it's  
25 already gone through FRB and the officer's chain of

1     **command and potentially the chief?**

2     A.       Yes.

3     **Q.       Okay. Do they have the discretion or authority**  
4     **to investigate any violations of policy before that**  
5     **point, before they get it after the chief review?**

6     A.       Like I said, they do a concurrent investigation.  
7     Usually they don't do anything until they get the  
8     package from us, but I don't see why they couldn't. Now  
9     we do try and keep criminal and administrative  
10    investigations separate. We don't want any  
11    administrative investigations taking place before the  
12    criminal investigation is over because we don't want any  
13    of those investigations to influence the criminal case.  
14    That's more the prosecutor's thing.

15   **Q.       Why?**

16   A.       Well, we don't -- you don't know what's going to  
17   happen with the administrative investigation. They  
18   don't want that to have any influence whatsoever on the  
19   criminal investigation. Additionally administrative  
20   investigations are public record right away, whereas if  
21   it's still an ongoing criminal investigation that hasn't  
22   gone to court yet, they wouldn't want that information  
23   out there.

24   **Q.       Wouldn't it be in the interest of public safety**  
25   **to address any policy violations of an officer in a**

1     **timely manner?**

2     A.         Yes.

3     **Q.         And yet the division routinely waits until the**  
4     **conclusion of not only the criminal investigation, but**  
5     **the entire FRB and chain of command review before**  
6     **looking at any corrections of any policy violations?**

7     A.         I think if there's something glaringly obvious  
8     the chain of command is going to take action from the  
9     night of.  If it's not a matter of public safety or  
10    something like that, if it's just tactics or something  
11    they'll address that at a later time.

12    **Q.         Has the chain of command in the division of**  
13    **police in Columbus ever taken any action to correct**  
14    **policy violations immediately following a police**  
15    **shooting?**

16    A.         I'm not really sure.  That's outside my scope of  
17    control, so I'm not really sure.

18    **Q.         Have you ever heard of that happening?**

19    A.         I can't really think of one right now.

20    **Q.         And you've been on the scene of nearly every**  
21    **police shooting since 2009, right?**

22    A.         For the most part, yes.

23    **Q.         And you can't think of any time where the chain**  
24    **of command or anyone on scene determined that some**  
25    **immediate action needed to be taken in terms of a policy**

1 **violation?**

2 MR. HALLORAN: Objection.

3 A. I can't really remember. One was tickling my  
4 memory there. I was thinking there's one-time where an  
5 officer got into multiple shootings in a short period of  
6 time, and I think they pretty much pulled him off the  
7 street for a little while to assess whether those were  
8 good shootings or if this was a problem officer, but I  
9 don't really recall which one that was.

10 BY MS. GELSOMINO:

11 **Q. Was that at all related to the shooting of Tyree**  
12 **King?**

13 A. No.

14 **Q. In the CIRT investigation do you consider**  
15 **officer background and the officer's other uses of force**  
16 **in the context of the investigation?**

17 A. Yes.

18 **Q. How?**

19 A. Well, we evaluate those and see how many  
20 shootings they've been in, and then we'll ask them  
21 during formal statement if those previous incidents  
22 affected their actions in this case at all as well.

23 **Q. In many cases in CIRT investigations you have to**  
24 **weigh the credibility of various witnesses, right?**

25 A. Yes.

1       **Q.           How do you do that in an un-bias manner?**

2                               MR. HALLORAN:  Objection.

3       A.           I think that, again, is on a case-by-case basis.  
4       With each individual that you interview you attempt to  
5       use the various techniques that we use in an interview  
6       to determine whether you believe them to be truthful or  
7       not.  In addition to that, you match that up with the  
8       evidence that you find at the scene.

9       BY MS. GELSOMINO:

10      **Q.           What are some of those techniques that are used**  
11      **in interrogations to determine whether someone is being**  
12      **truthful?**

13      A.           There's different techniques that you use, such  
14      as kinetic techniques where you're looking at the  
15      nonverbal cues of the person you're interviewing.  Some  
16      of those indicate deception.  You're looking at how  
17      nervous the individual is.  You evaluate the answers to  
18      the question and their confidence is those answers, or,  
19      you know, pregnant pauses that they have.  Things of  
20      that nature.  Many of those things go into whether you  
21      believe the person to be credible or not.

22      **Q.           Do you also try to identify pieces of evidence**  
23      **that contradict parts of the witness statement?**

24      A.           Yes.

25      **Q.           Do you do that with officer suspect statements?**

1 A. Yes.

2 Q. How?

3 A. The exact same way. If they say something that  
4 doesn't match up with our evidence, that's something  
5 that we're going to want to delve into deeper and ask  
6 additional questions on.

7 Q. You agree with me that CIRT does not conduct an  
8 independent investigation?

9 A. No, I don't.

10 Q. Well, you're a bunch of homicide detectives  
11 within the department, right?

12 A. Right.

13 Q. Investigating your own officers?

14 A. Correct.

15 Q. Has there ever been any discussion within the  
16 division of police about engaging some agency outside of  
17 the division of police to conduct these investigations?

18 A. Yes.

19 Q. Tell me about those.

20 A. Currently, according to a decree by the Mayor  
21 and a change of the charter by city council, now  
22 investigations involving Columbus Police Officers are to  
23 be conducted by the Bureau of Criminal Investigation  
24 identification, the State BCI agents.

25 Q. How do you feel about that?

1 A. To be honest, I understand the public perception  
2 that exists about investigating your own detectives, but  
3 I believe that the CIRT team has operated for the last  
4 25 years with the most integrity, and I don't think they  
5 can show me any one of those cases that we weren't  
6 unbiased in.

7 **Q. So why do you think that the city and the**  
8 **division are doing this then?**

9 A. Public perception.

10 **Q. What does that mean?**

11 A. I think the public by and large is untrustful of  
12 an agency investigating their own people. You know,  
13 there's any number of television shows that portray the  
14 police as corrupt and not being trustworthy enough to do  
15 those investigations. That's not been my experience,  
16 but I do understand where the public perceives that  
17 might exist.

18 **Q. Is there a burden -- like do you evidence by a**  
19 **preponderance or anything like that in terms of trying**  
20 **to weigh the competing evidence?**

21 A. I'm not really sure what you're asking.

22 **Q. Sure. That's fair. Has CIRT ever credited a**  
23 **civilian statement regarding the justification to use**  
24 **force over a police officer's statement?**

25 A. So if I understand the question correctly, are



1 you asking me have we ever believed a civilian witness  
2 that pretty much nullified the credibility of the  
3 officer witness, is that what you're saying?

4 **Q. Yes.**

5 A. I do recall one case in particular where the  
6 officer was not -- it wasn't that the officer had not  
7 been credible, but it was an omission of a fact that we  
8 believed the civilian witness over the officer that led  
9 to us investigating the officer in an area more  
10 specifically.

11 **Q. Tell me more about that.**

12 A. There was an officer that was chasing a person  
13 that had warrants. This person ran into a body of  
14 water, and swam out into the body of water, and  
15 eventually drown. So it was a death in custody.  
16 Basically it was a death in custody investigation, and  
17 several of the civilian witnesses reported that the  
18 officer had been throwing rocks from the shore and the  
19 officer had failed to disclose that to us. Once we had  
20 that information and an area that we had to delve into  
21 in a formal statement and specifically ask the officer  
22 what the situation was with that, and it ended up  
23 resolving itself. But that was one where we did  
24 question the credibility of the officer at first because  
25 they omitted that information.

1       **Q.       Did you still credit the remainder of the**  
2       **officer's statement?**

3       A.       We did, because the facts of the matter were  
4       that the water was so cold that the person drown. They  
5       jumped into the water on their own volition and the  
6       reason of the death had nothing to do with the officers.  
7       There wasn't much we could do with that one other than  
8       document the facts.

9       **Q.       Has there ever been a time where a civilian**  
10       **witness statement contradicted a police officer suspect**  
11       **statement regarding the reason he used deadly force?**

12      A.       I can't specifically recall at this time.

13      **Q.       Okay. So you can't think of any times where you**  
14      **or the CIRT team credited the statement of a civilian**  
15      **witness regarding the justification for the use of force**  
16      **over the statement of the police officer suspect, right?**

17                       MR. HALLORAN: Objection.

18      A.       I don't necessarily believe that that's been the  
19      case. It's more that the civilian witnesses have  
20      corroborated the officer's testimony. I can't recall  
21      one that made us change our opinion of the officer's  
22      credibility.

23      BY MS. GELSOMINO:

24      **Q.       Okay. Was there an IA investigation into the**  
25      **shooting of James England?**

1 A. I'm not sure.

2 **Q. How would I find that out?**

3 A. Contact Internal Affairs. I don't believe there  
4 was because I reviewed that package, as I said, before I  
5 came here, and there was nothing in the package.

6 Usually we'll get a notification of some Internal  
7 Affairs complaint or something along those lines, and  
8 there was nothing in that investigative package, so I  
9 don't believe there was.

10 **Q. How about for the shooting of Deaunte**  
11 **Bell-McGrew?**

12 A. I don't believe so.

13 **Q. And the shooting of Tyree King, was there an IA**  
14 **investigation?**

15 A. Tyree King, I don't specifically recall an  
16 Internal Affairs investigation with Tyree King.

17 **Q. Okay. So after the use of deadly force there's**  
18 **no group within the division that is automatically**  
19 **tasked with investigating the use of deadly force for**  
20 **violations other than a violation of the force policy,**  
21 **right?**

22 A. No. Like I said earlier, that would be up to  
23 the chain of command, the officer's immediate chain of  
24 command when they get the package from the Firearms and  
25 Death Review Board?

1 Q. They look at all of the policy violations?

2 A. Yes.

3 Q. And they can do that without consulting IA?

4 A. Yes. The chain of command can take their own  
5 action and find that they violated a policy and take  
6 discipline action without IA involvement.

7 Q. After an investigation goes through the chain of  
8 command to the chief, then it goes back to CIRT?

9 A. No. After it goes through -- say it goes  
10 through the chief of police for the tie breaker  
11 decision, then if discipline is recommended, a copy of  
12 the package will go to human resources and then another  
13 copy of the package will go to internal affairs.

14 Q. Do you have any further involvement with any  
15 deadly force investigation after the conclusion of the  
16 CIRT investigation?

17 A. You mean other than civil depositions?

18 Q. Yes.

19 A. That was a little joke. I'm sorry. Not really.  
20 I don't have further involvement unless there's a  
21 lawsuit filed or something of that nature.

22 Q. Which policies and practices or SOPs govern the  
23 CIRT investigation and the CIRT team?

24 A. Policies and practices, that would be our use of  
25 force directive. I think there's something in the

1 serious crime scenes directive, the discharge firearms  
2 directive. We have a CIRT SOP, and that might be it.

3 Q. Okay. There is a CIRT manual, right?

4 A. Yes. That's our SOP.

5 Q. That was going to be my next question.

6 A. Yes.

7 Q. I'm going to show this to you and we'll mark  
8 this as **Exhibit 1**.

9 - - - -

10 (Thereupon, Plaintiffs **Exhibit 1** was marked for  
11 identification.)

12 - - - -

13 BY MS. GELSOMINO:

14 Q. What do you see?

15 A. That's the table of contents for the Critical  
16 Incident Response Team SOP.

17 Q. Okay. Perfect. I'm just going to scroll  
18 through this quickly. It's a 31 page document. Let me  
19 know if you think this is the complete SOP that you  
20 referred to.

21 A. You can go a little faster. I believe this is  
22 the completed version.

23 Q. This is like the primary SOP that --

24 A. That CIRT follows, yes.

25 Q. Other than some mention of CIRT in those other

1 policies that you mentioned, is there any other written  
2 policy or practice that governs the CIRT team?

3 A. I don't think so, no. Maybe the general  
4 investigative procedure for the Major Crimes Bureau SOP.

5 Q. Okay. So we'll mark that as **Exhibit 1**. So all  
6 of the practices and procedures and customs that you've  
7 described up to this point in the deposition, did all of  
8 those apply in 2015 and 2016 at the times of the  
9 shooting of James England, Deaunte Bell-McGrew, and  
10 Tyree King?

11 A. I'm not sure, because that SOP was revised in  
12 December 19th of -- what does it say at the bottom  
13 there?

14 Q. December 19th, 2013.

15 A. Okay. Then, yes. They would have been.

16 Q. Okay. Is the shooting officer ever taken off  
17 work, like taken off the streets after the deadly force  
18 event?

19 A. Yes. It's division policy that they'll get a  
20 mandatory three days off. Their chain of command  
21 commander can give them more days off if they feel it's  
22 necessary. Most of that is to give them time to meet  
23 with their attorney and also they have to meet with the  
24 police psychologist before they're allowed to come back  
25 to work.

1 Q. Has CIRT ever completed their investigation as  
2 to potential criminal charges before an officer comes  
3 back to work?

4 A. I don't believe so, no.

5 Q. So you have officers in the division who are  
6 functioning with full police powers on the streets even  
7 while they're being investigated for a potential  
8 homicide?

9 A. Correct.

10 Q. And also you have officers within the division  
11 of police who are functioning with full police powers on  
12 the streets before their actions in taking deadly force  
13 have been evaluated for any policy violations, right?

14 A. Correct.

15 Q. Now, do you conduct any training for CIRT teams?

16 A. I do.

17 Q. Tell me about that.

18 A. I teach two cases for the division on CIRT. One  
19 I do for the new supervisors. Those that have just been  
20 promoted to supervisor, or those that are on the list to  
21 be promoted for supervisor, I'll do a new supervisor  
22 training class. And then I also once a year do a CIRT  
23 class for the officer support team.

24 Q. What is that CIRT class for the officer support  
25 team called?

1 A. It's just CIRT procedures.

2 **Q. Is this part of like an inservice training?**

3 A. Pretty much.

4 **Q. What materials do you use when you do the**  
5 **supervisor training?**

6 A. It is pretty ad-lib. With those supervisors,  
7 they're newly promoted supervisors, so my focus with  
8 them is pretty much making sure that the scene is  
9 secure, making sure that witnesses are separated, and  
10 that kind of thing.

11 **Q. Do you use any notes or outline or agenda or**  
12 **anything for those classes?**

13 A. Not for that one, no.

14 **Q. Do you use any Power Points or any other**  
15 **presentation materials?**

16 A. For the officer support team, I think I do, and  
17 just in the last year I've done it twice, taught the new  
18 recruits just before they got on the street, and I do  
19 have a Power Point for that.

20 **Q. So for the sergeant no Power Point, presentation**  
21 **materials or handouts?**

22 A. I don't think so, no.

23 **Q. So then, for the CIRT team officer do you have a**  
24 **Power Point?**

25 A. For the officer support teams.



1 Q. Okay. So the sergeants, the officer support  
2 team and the recruits?

3 A. Yes.

4 Q. So for the officer support team, what materials  
5 do you use?

6 A. For officer support team I believe I have a  
7 Power Point.

8 Q. Anything else?

9 A. No.

10 Q. Have you ever changed the Power Point?

11 A. No. It's actually I don't -- it's been used for  
12 a long time. I don't think anything has changed on it.

13 Q. Okay. Did you create it?

14 A. No. Detective Jim McCosky did years and years  
15 ago.

16 Q. Okay. For the recruits, tell me about that  
17 training.

18 A. For the recruits I just go over -- it's pretty  
19 much the same class as the officer support class, but  
20 it's in a lot more detail. I kind of tell them what to  
21 expect if they get into a police involved shooting on  
22 the first day of their coaching period. I run through,  
23 just like I did with you, what the CIRT investigation is  
24 going to look like. That they'll be assigned an officer  
25 support team member. We'll walk them through what the

1 procedures are going to be, and everything like that. I  
2 go through the procedures with them more or less.

3 Q. Okay. All right. I'm showing you what I'm  
4 going to mark as **Exhibit 2**.

5 - - - -

6 (Thereupon, Plaintiff's **Exhibit 2** was marked for  
7 identification.)

8 - - - -

9 BY MS. GELSOMINO:

10 Q. Do you see this document that's says, "Best  
11 practices for officer involved shootings"?

12 A. Yes.

13 Q. What is this?

14 A. This is a class I teach for OPOTA. We put  
15 together that class some years ago because a lot of your  
16 smaller agencies have never ever had a police involved  
17 shooting. So I put that together for them, and I've  
18 taught that two to three times for OPOTA.

19 Q. Have you ever used any other teaching materials  
20 for OPOTA?

21 A. For OPOTA, no.

22 Q. Have you ever made any changes or edits to this  
23 Power Point?

24 A. I'm not sure. Part of this Power Point heavily  
25 involves on the SOP. If there was a change to the SOP I

1 may have made the exact same change to where it speaks  
2 to the SOP in this, but I don't specifically recall.

3 **Q. Okay. When did you first create this Power**  
4 **Point?**

5 A. It's been a while ago. Steve Eppert was on it  
6 with me and he's been retired for several years now.  
7 Maybe four or five years ago.

8 **Q. Okay. Do you use any other agendas, notes,**  
9 **outlines, anything for your OPOTA presentation?**

10 A. No. I do give them a copy of our SOP, our CIRT  
11 manual, and also a copy of our use of force and  
12 discharge firearms directive.

13 **Q. Okay. Anything else?**

14 A. Huh-uh.

15 **Q. Is that a no?**

16 A. I'm sorry. I do not believe so, no.

17 **Q. Okay. Does this Power Point, which I've marked**  
18 **as Exhibit 2, accurately explain the customs and**  
19 **practices and policies of the division of police?**

20 A. I believe so, yes.

21 **Q. Related to deadly force incidents?**

22 A. Yes.

23 **Q. Okay. Is there anything that you believe is**  
24 **inaccurate or should be changed from this Power Point**  
25 **that you created?**

1 A. I don't believe so.

2 Q. Okay. Now the other Power Point that you said  
3 you used for the officer support team, have you ever  
4 given that to any of the lawyers in any of these cases?

5 A. I don't believe so, no.

6 MS. GELSOMINO: Mike, do you know if  
7 that was produced to us?

8 MR. HALLORAN: I don't know, but we  
9 can check. I presume if it was created after 2016, I  
10 could speak for Cooper, but not necessarily the other  
11 two cases if it's been produced. We probably objected  
12 to it, but we can look.

13 MS. GELSOMINO: Okay. Thank you.

14 BY MS. GELSOMINO:

15 Q. When did you create the Power Point materials  
16 that you used for your officer support trainings?

17 A. That also has been a long time ago. I don't  
18 recall specifically, but it's been a long time ago.

19 Q. More than four years ago probably?

20 A. Oh, yeah.

21 Q. Okay. Thank you. Other than the trainings that  
22 we just talked about that you conduct within the  
23 department and this OPOTA one, do you do any other  
24 training on CIRT or anything else?

25 A. No.

1       **Q.           Have you ever presented anywhere else?**

2       A.           No. I did a use of force class for the new  
3       supervisor school, but that was probably more than ten  
4       years ago.

5       **Q.           Okay. Have you ever published anything, thought**  
6       **pieces, articles, posted to LinkedIn, anything like that**  
7       **relating to your police duties?**

8       A.           No.

9       **Q.           How about social media, do you use it?**

10      A.           I do use social media. But I'm very weary about  
11      social media. I don't even hit like on stuff. I'm a  
12      classic troll. I wouldn't know what my daughters were  
13      doing if I didn't have social media, but that's pretty  
14      much all I use it for.

15      **Q.           Okay. Have you ever posted at all on social**  
16      **media?**

17      A.           I'm sure I have, but most of it is either happy  
18      birthday or about woodworking. I steer clear of police  
19      related topics.

20      **Q.           Do you like or follow any pages that are related**  
21      **at all to policing?**

22      A.           Yes. I think Police One, maybe. I'm not sure  
23      if I follow that on Facebook or not. Maybe the FOP. I  
24      can't really think of anything else.

25      **Q.           What's your Facebook name?**

1 A. E. Pilya.

2 Q. Very creative. Do you use any other social  
3 media platforms other than Facebook?

4 A. I do have Instagram. I do have Snapchat. I  
5 never use it.

6 Q. For your daughters?

7 A. Exactly.

8 Q. What's your Instagram handle?

9 A. I don't even know. It's probably E. Pilya.

10 Q. Okay. What about like Twitter or LinkedIn or  
11 anything like that?

12 A. I do have a Twitter, and it's probably E. Pilya  
13 too.

14 Q. Okay. Any other social media?

15 A. I don't think so.

16 Q. So in your capacity as the head of the CIRT team  
17 what documentation do you create? Obviously, you  
18 approve the CIRT investigations themselves, but in terms  
19 of reports, summaries, data collection, any other CIRT  
20 duties that you have, what do you do?

21 A. I do a CIRT spreadsheet that is just an overview  
22 of what officers were involved, what date it happened,  
23 what PIS number it is. You guys should have all of  
24 that. I also do a CIRT summary that just is pretty much  
25 a rolling document throughout the year as well. You

1 guys should probably have that as well.

2 **Q. I'm going to ask you some questions about that.**  
3 **Anything besides those two?**

4 A. Let's see. I have a spreadsheet internally that  
5 I keep to document which CIRT members are showing up. I  
6 want to make sure that they show up for the CIRT  
7 callouts. I have another one that documents the  
8 rotation. It's just something that changes. I put the  
9 date of the latest one and filter it, and they go to the  
10 bottom and the next person is up for the next one. I  
11 also make changes to the call-in sheet. Basically it's  
12 like changing phone numbers and adding new members when  
13 somebody leaves or somebody is added. Things of that  
14 nature. I think that's pretty much it.

15 **Q. What's the purpose of the CIRT spreadsheets that**  
16 **you make?**

17 A. Just for me to manage so that I know what's  
18 going on and just have an overview. If anybody calls --  
19 we handle so many cases. If somebody calls and they  
20 have somebody's name I have ready reference to look it  
21 up and know what case number it is so I can go look at  
22 it.

23 **Q. It's not something that you pass on to anyone**  
24 **else in the department?**

25 A. No. The spreadsheets and the summary go to my

1 chain of command and Chief Quinlin. They also go to our  
2 secretaries so they know when we have a new one, and our  
3 crime analysis are also copied on that.

4 **Q. Okay. How often do you send the spreadsheet and**  
5 **summaries to those people?**

6 A. Every time there's a PIS.

7 **Q. So you just send like an updated summary?**

8 A. Yes. I update it.

9 **Q. Does it include all the previous entries from**  
10 **that year?**

11 A. Yes.

12 **Q. Do you ever do any kind of annual review or**  
13 **anything to track trends?**

14 A. No. We don't do anything with trends. We are  
15 always bombarded to give statistics to the media or city  
16 hall or whatever. Usually it's to total numbers at the  
17 end of the year. How many we add, but that's about it.  
18 There's no real -- the commander might add those totals  
19 in the annual report every year of how many PIS we've  
20 had, but I personally do not do an annual.

21 **Q. Okay. There are some acronyms in your**  
22 **spreadsheet that I'm not familiar with, so I'd like you**  
23 **to try to help me understand them, please. In the**  
24 **status column you write GJ/NB?**

25 A. Grand Jury no bill.



1 Q. Okay. IP?

2 A. In-policy.

3 Q. CBA?

4 A. Cleared by arrest.

5 Q. And, again, that has never been -- that's not  
6 cleared by the officer's arrest, right?

7 A. No. Maybe in Andy Mitchell's case.

8 Q. What does it mean?

9 A. Cleared by arrest? It means that the case was  
10 -- there was an arrest made out of the case either of  
11 the police suspect or the civilian suspect.

12 Q. Has it ever been cleared by arrest of the police  
13 suspect other than potentially Andy Mitchell?

14 A. I don't think so, no.

15 Q. Why would an arrest of a civilian lead to the  
16 clearing of the police shooter in a criminal  
17 investigation?

18 A. It wouldn't. They're pretty much, it's the same  
19 with that investigation used for different purposes.

20 Q. How so?

21 A. Well, it's like the criminal case into the  
22 officer, it's all one investigation, but we're looking  
23 at the officer, and if the officer did anything  
24 criminally wrong, and then we look at the civilian  
25 suspect and did they commit any crimes. And then, you

1 know, there's once -- for instance, let's say that it's  
2 a nonfatal police involved shooting and we've determined  
3 that the officer didn't commit a crime. For that  
4 officer that part of the investigation is concluded, but  
5 that same investigation is still going if we file  
6 charges on a criminal suspect until that's adjudicated.

7 **Q. What does cleared by arrest then mean in this**  
8 **column?**

9 A. That's just an internal terminology we use for  
10 reports, like our premier one report you're familiar  
11 with, that's a clearance code for that report.

12 **Q. What does cleared mean?**

13 A. It basically is saying that that report is  
14 closed based on the fact that an arrest was made.

15 **Q. So it may or may not have anything to do with**  
16 **the police officer?**

17 A. Correct. Most cases it would not.

18 **Q. If a civilian is charged with a crime what**  
19 **impact, if any, does that have on the criminal**  
20 **investigation of the police officer shooter?**

21 A. Well, if a civilian committed a crime say,  
22 robbed the UDF, and then they came out and got into an  
23 altercation with a police officer and was shot they  
24 would be charged with the robbery of the UDF, so that  
25 one doesn't really play a big role in the police

1 involved shooting. But if the suspect also came out and  
2 pointed a gun or fired a shot at the officer, then they  
3 would be charged with that too. And in those cases I  
4 would say that criminal charge is more intertwined.  
5 It's not going to have a lot to do with the officer.  
6 The decision is going to be was the officer acting like  
7 a reasonable officer would and acting within the scope  
8 of his duties of a law enforcement officer.

9 **Q. Okay. What does EX-CLR means?**

10 A. That's exceptionally clear. Again, that's one  
11 of our premier one report classifications. A report is  
12 exceptionally clear, for instance, but the death of an  
13 offender, someone not wanting to cooperate, you know, an  
14 uncooperative victim. There's several different reasons  
15 why you can ex-clear a case. That's loosely something  
16 we use just to say this is where this is going. When  
17 the Grand Jury no bills a case and says that it's not a  
18 crime, traditionally we ex-clear that. More recently we  
19 had a lieutenant that said that that wasn't technically  
20 accurate, that it should be closed, not a crime. That's  
21 a different report classification. Before that  
22 lieutenant previously we always used exceptionally  
23 cleared because there wasn't going to be a prosecution.

24 **Q. Okay. There's another column that says FDRB?**

25 A. Firearms Death Review Board.

1       **Q.           And then in that column is IP, in-policy?**

2       A.           In-policy. And those are technically accurate.  
3       Those are my little notations. I know what you're  
4       looking at. That's the status of the investigation. We  
5       kind of went away from that. Like I described earlier,  
6       they do intentional in-policy, intentional  
7       out-of-policy, unintentional in-policy and unintentional  
8       outside of policy. But it's still pretty much -- for my  
9       notation I just put it was ruled in-policy.

10      **Q.           Why are you making any notations at all about**  
11      **what the Firearms Review Board does with these?**

12      A.           Just so I know where that case is at. I get  
13      called all the time on these police involved shootings  
14      and get, "asked is this case closed? Is it over?" Or  
15      whatever. Once it's been through the criminal process  
16      and once it goes to the Firearms Review Board, once I  
17      have a ruling back from them, as far as I'm concerned  
18      that's completely over.

19      **Q.           So you're just tracking what's happening there**  
20      **even though your role in this is technically over?**

21      A.           Correct. Correct.

22      **Q.           Okay. Fair enough. The next one is AD-INIP.**  
23      **What does AD stand for?**

24      A.           AD is accidental discharge. That terminology  
25      has also been changed. They want us to refer to it as

1 an unintentional discharge.

2 **Q. Okay. And then on here with AD-INIP, I presume**  
3 **the rest of is intentional in-policy?**

4 A. If it's NIP, it's intentional not in-policy.

5 **Q. AD-INIP.**

6 A. Intentional not in-policy.

7 **Q. Oh, I see now.**

8 A. Yes.

9 **Q. Thank you. I was grouping the letters**  
10 **differently in my head. And then PIT-NIP?**

11 A. That would be a pit maneuver, and then NIP is  
12 not in-policy.

13 **Q. What's pit maneuver?**

14 A. A pit maneuver is when you're trying to catch a  
15 car, they've been involved in something, they bump the  
16 back end and it spins out. It's basically a stopping  
17 technique.

18 **Q. Okay. I,IP, is that intentional in-policy?**

19 A. Yes.

20 **Q. NVP?**

21 A. NVP, not a violation of policy.

22 **Q. Okay. INVP?**

23 A. Intentional not a violation of policy. I know  
24 it's confusing.

25 **Q. That's something different though, intentional**

1     **not in violation of policy, right?**

2     A.       Yeah. Basically for my notation NVP, and NIP  
3     are the same thing.

4     **Q.       How is intentional not in violation of the**  
5     **policy the same as intentional not within the policy?**

6     A.       They're not different. They changed terminology  
7     and, you know, this is pretty much is for my own  
8     records, so I know what I'm talking about.

9     **Q.       Hold on. I still don't. I'm sorry. The way**  
10    **I'm reading is intentional not in-policy. It's not**  
11    **in-policy there would be a violation, right?**

12    A.       Yes. Not in-policy means it was outside of  
13    policy.

14    **Q.       Got it.**

15    A.       But then, not a violation of policy. You're  
16    right. I was the one that was confused. Not a  
17    violation of policy means that it was in-policy.

18    **Q.       Okay. Got it. So they are different?**

19    A.       Yes. Sorry.

20    **Q.       Okay. FOR?**

21    A.       Foreign. We did it for a foreign jurisdiction.

22    **Q.       Okay. Thank you for helping me with that.**

23                   MS. GELSOMINO: Michael, all of these  
24    CIRT summaries and the spreadsheets that you guys have  
25    produced, I would prefer not to go through and take up

1 time to authenticate all of them. What we were able to  
2 do with Wes previously this week is to just get a  
3 stipulation that you wouldn't challenge the authenticity  
4 of those documents. Can we do that here?

5 MR. HALLORAN: As long as they're the  
6 same ones that we produced.

7 MS. GELSOMINO: Yes. They're what you  
8 produced. I can't even get through the questions about  
9 the acronyms let alone make it up.

10 BY MS. GELSOMINO:

11 Q. I do have have some questions for you about some  
12 specific summaries. Let me pull this up. Do you see  
13 the 2011 police involved situations?

14 A. Yes

15 Q. This is what you created in 2011, right?

16 A. Yes.

17 Q. As your CIRT summary?

18 A. Yes.

19 Q. I'm going to mark this as **Exhibit 3**.

20 - - - -

21 (Thereupon, Plaintiff's **Exhibit 3** was marked for  
22 identification.)

23 - - - -

24 BY MS. GELSOMINO:

25 Q. Look at the first one, Harry Boney.

1 A. Okay.

2 Q. Do you remember this shooting?

3 A. Vaguely.

4 Q. The status here is cleared by arrest. What does  
5 that mean in this case?

6 A. In this one it was the arrest of the civilian  
7 suspect.

8 Q. How did that, if at all, impact the CIRT  
9 conclusions regarding the officer?

10 A. The only way that I can really think to answer  
11 that question is based on what the suspect's actions  
12 were determined what the officer's actions were. I  
13 guess that's the way we would look at that.

14 Q. In this case was there ever any allegation that  
15 at the time of the shooting Mr. Boney posed an actual  
16 imminent threat of death or great bodily harm to the  
17 shooting officer?

18 A. I don't specifically remember, but where it says  
19 charges, it says "aggravated menacing," so in my mind it  
20 means that the suspect pointed a weapon at the officer.

21 Q. But you're not sure?

22 A. I don't specifically remember.

23 Q. Okay. Why don't you have the name of the  
24 officer in here?

25 A. The involved officer is Uniform Patrol Officer



1 Steven Foe. Male, white, 28.

2 Q. Oh, sorry. I looked right past it. Thank you.

3 At the time that you created this summary Regarding  
4 Harry Boney, did you know what the Firearms Review Board  
5 determination was?

6 A. At the time that I created that, no.

7 Q. Did you know what the conclusions of the  
8 criminal case against Boney were?

9 A. No. And I'll explain my procedure with that, if  
10 you'd like.

11 Q. Thank you.

12 A. On the night of the PIS, I would have filled in  
13 pretty much down through charges, and then possibly if  
14 we had filed charges on him that night, I may have  
15 entered in the status. Once the case is over, and I  
16 even wait until the Firearms Review Board is done, that  
17 secretary that I told you about that assigns the  
18 Firearms Review Board commanders, when they have come to  
19 a final decision, be it the Firearms Review Board, chain  
20 of command or the chief, she'll send me the decision.  
21 Once I have that decision I'll go in and put under  
22 Firearms Death and Review Board, I'll put what they  
23 found and what date is on the routing sheet or the  
24 decision that she sent me, and then I'll go back into  
25 our electronic version of our files and read the final

1 process and see what happened in court and include that  
2 information at the time, too. That's so in the future  
3 people can look at this and know what happened in that  
4 case.

5 **Q. Okay. Then after you finished completing that**  
6 **part of it, did you like send this back out again?**

7 **A.** No. The investigative package, the secretary  
8 that sends me the final review, she's the one  
9 responsible for sending it to Internal Affairs.

10 **Q. She sends the package to Internal Affairs?**

11 **A.** Yeah. She's the secretary for the deputy chief  
12 in charge of the Firearms Review Board, the chairman.  
13 When this is all concluded she sends one of the three  
14 copies that I made. She'll sent one to Internal Affairs  
15 and destroy the other two.

16 **Q. But this summary report here, after you complete**  
17 **it with the information from the court and Firearms**  
18 **Review Board, do you send it out again to anyone?**

19 **A.** No, I don't. And full disclosure, I lack in  
20 going back and updating that.

21 **Q. I appreciate that disclosure. Let's look at**  
22 **2012. I'll mark this as Exhibit 4.**

23 - - - -

24 **(Thereupon, Plaintiff's Exhibit 4 was marked for**  
25 **identification.)**

- - - -

BY MS. GELSOMINO:

**Q. I want to look at the bottom of page three onto page four regarding Anthony Wadsworth. Do you recall this shooting?**

**A. Yes. I vaguely remember this one. He was stopped at the gas station.**

**Q. And in this case were there any charges brought against the officers?**

**A. No.**

**Q. Why not?**

**A. This was a murder suspect. If I recall right, they believed he was reaching for a weapon as they were attempting to arrest him and they fired shots into the vehicle striking him.**

**Q. Was there any allegation that at the time of this shooting Mr. Wadsworth posed an actual imminent threat of bodily harm to the officers?**

**A. I don't recall all the specifics of this. I need to refresh my memory, but I'm sure that was the case.**

**Q. Why are you so sure of that?**

**A. Because we didn't file charges on the officers.**

**Q. Okay. Was Mr. Wadsworth in possession of a firearm?**

1 A. I do not recall.

2 Q. Did any of the officers claim that he actually  
3 had a firearm at the time that they shot him?

4 A. I do not recall.

5 Q. All right. I'm looking for this one here at the  
6 top of page 12, PIS 12-15. Do you recall this shooting?

7 A. Yes, I do.

8 Q. What do you recall about it?

9 A. This took place in an apartment complex and the  
10 victim was the victim of a home invasion. They had  
11 broken into his apartment and threatened him with a gun.  
12 At some point he had taken the gun off of the suspect  
13 and ran out of the apartment. The police had been  
14 called and while responding to the run, Officer Kaufman  
15 runs pretty much right into the suspect/victim running  
16 with a gun in his hand. I don't recall if he asked him  
17 to drop it or what happened with that, but I do recall  
18 that he felt threatened by the gun and fired at this  
19 individual and killed him.

20 Q. You said "the suspect/victim?"

21 A. Well, in the officer's mind he was a suspect  
22 because he was coming at him with a gun. He didn't know  
23 at the time that this was actually the victim and he had  
24 just taken the weapon off the suspects who were the home  
25 invasion people.

1 Q. So the residence called the police for help and  
2 ended up being killed by the police that night?

3 A. Yes.

4 Q. And what were the results of this investigation  
5 from CIRT?

6 A. Well, we found he didn't do anything criminally  
7 wrong and that it went to the -- well, let me -- I  
8 misspoke. We sent that to the prosecutor, who sent it  
9 to the Grand Jury, who determined that he didn't do  
10 anything criminally wrong, so it was exceptionally  
11 cleared. It went to the Firearms Review Board and was  
12 found in-policy.

13 Q. Do you know why it was found to be within  
14 policy?

15 A. Yes.

16 Q. Tell me.

17 A. So most of what the officers rely on for using  
18 deadly force is a Supreme Court case called Graham vs.  
19 Connor. And in that Supreme Court case it says that the  
20 officer is judged based on what the officer knew at the  
21 time they fired their weapon, absent hindsight 20/20.  
22 In this particular case this officer had a male, black,  
23 I believe he was only in his boxers, he may have had  
24 socks on, I'm not sure. He was running at him with a  
25 gun in his hand. I don't specifically recall whether he

1 made commands that weren't followed or what, but the  
2 officer felt that his life was in danger because this  
3 individual was approaching him with a firearm. So the  
4 information known to him at the time was that this  
5 person was a threat. Later investigation revealed that  
6 this guy was the victim of a home invasion and was  
7 running outside to get away from these guys and had  
8 taken the gun away from them and had it in his hand, but  
9 that's information that was not known to Officer Kaufman  
10 at the time that he fired his weapon. It was based on  
11 the information that the officer had at the time he  
12 pulled the trigger.

13 **Q. Did any of the investigators from the division**  
14 **of police consider the fact that the resident of the**  
15 **home was wearing boxer shorts and socks at the time that**  
16 **he was shot?**

17 A. I'm sure that's the case, but I don't remember  
18 specifically what Officer Kaufman said. I believe he  
19 said that it happened so fast he didn't really realize  
20 that until it was all over.

21 **Q. A person in a home wearing boxers and socks,**  
22 **seeing a person like that would indicate that they lived**  
23 **in that home, right?**

24 MR. HALLORAN: Objection.

25 A. If they had time to think about it.

1 BY MS. GELSOMINO:

2 **Q. Have you ever heard of a home invader who**  
3 **invaded a home in underwear?**

4 MR. HALLORAN: Objection.

5 A. Actually, I have.

6 BY MS. GELSOMINO:

7 **Q. I can't wait for the story. Go ahead.**

8 A. Actually there was an individual that was hopped  
9 up on drugs and was actually going around breaking into  
10 homes completely naked, and had a knife in his hand, and  
11 terrorized this neighborhood until they called the  
12 police, and that was another police involved shooting.  
13 But this person was breaking into homes and threatening  
14 them with a knife and was naked.

15 **Q. Was that person also killed by the police?**

16 A. I don't recall. I know the person was shot. I  
17 don't remember if that was a fatal or not.

18 **Q. Was that person naked at the time he was shot?**

19 A. Yes, I believe so.

20 **Q. What's his name?**

21 A. I do not recall. I could probably find it in  
22 flipping through all of these, but off the top of my  
23 head I don't recall.

24 **Q. Was Officer William Kaufman who shot and killed**  
25 **Dustin Thomas ever investigated for any other policy**

1 **violations?**

2 A. Out of this particular incident I would say no.

3 **Q. Why do you say that?**

4 A. I don't remember any policy violations in this.  
5 It wouldn't be up to CIRT to investigate that, but this  
6 was a pretty -- responding to a home invasion, get out  
7 of your cruiser and meet a suspect with a gun. I don't  
8 think there was a whole lot there to really evaluate.

9 **Q. Other than the fact that the resident of the**  
10 **home who was killed was holding a gun at the time that**  
11 **he was shot, were there any other allegations at the**  
12 **time that he was shot that he posed an actual imminent**  
13 **threat of death or bodily harm to the officer?**

14 A. I don't recall.

15 **Q. Okay. This next one is David O'Neil. Do you**  
16 **recall this shooting?**

17 A. The name rings a bell. Let's see. Yes. This  
18 is out of the same incident.

19 **Q. What do you mean?**

20 A. David O'Neil was a suspect out of the home  
21 invasion.

22 **Q. Did he steel the cruiser?**

23 A. Yes. He did steel the cruiser.

24 **Q. What was the conclusion at the end of the CIRT**  
25 **investigation?**



1 A. At the end of the CIRT investigation we did not  
2 find -- we believed that officer Camp-Donovan was acting  
3 within the scope of her duties, although she violated  
4 policy. This guy was a home invasion suspect. She  
5 believed there was a possibility he could have been  
6 armed, and she also had weapons in the vehicle that he  
7 stole, the cruiser, and believed that he could still be  
8 a threat. So she fired on her vehicle, which the  
9 department found she was in violation of and she was  
10 issued departmental charges for that. The suspect was  
11 actually found guilty at trial with all of his criminal  
12 charges it appears.

13 **Q. Okay. But the CIRT team did not recommend**  
14 **criminal charges against this officer?**

15 A. No. We did not.

16 **Q. Okay. And what factors -- was there ever any**  
17 **allegation at the time of this shooting of David O'Neil**  
18 **that he posed an actual imminent threat or great bodily**  
19 **harm to the officer or anyone else?**

20 A. I don't specifically recall the testimony given  
21 by the officer, but I believe she said that based on the  
22 totality of the circumstances, him having already  
23 committed one home alleged invasion, and being bold  
24 enough to steal a police officer's car, that he -- and  
25 the possibility that there are weapons in the cruiser

1 that he would be a threat to the public, not to the  
2 officer. I believe that's what she said in her  
3 statement, but I don't remember specifically.

4 **Q. How does any of that justify the use of deadly**  
5 **force?**

6 MR. HALLORAN: Objection.

7 A. Well, first of all, everything that she just  
8 said leads to a justification of her actions. She was  
9 acting within the scope of her duties. You have to  
10 understand, this isn't what I as the investigator  
11 believes, it's what the officer believes at the time  
12 they pulled the trigger. As I said, I don't recall  
13 specifically what she said in her formal statement, but  
14 I imagine it was enough for us to believe that she  
15 believed this person was a threat to the public.  
16 Therefore, that is a justification for using deadly  
17 force.

18 BY MS. GELSOMINO:

19 **Q. In order to use deadly force, there must be an**  
20 **imminent and actual threat, correct?**

21 MR. HALLORAN: Objection.

22 A. Yes. And the fact that she had weapons inside  
23 that cruiser I think led to that belief that she had at  
24 the time that she pulled the trigger.

25 BY MS. GELSOMINO:

1 Q. Okay. Now, is the determination here to be made  
2 what the officer thought at the time or what a  
3 reasonable officer would have thought at the time?

4 A. It is what a reasonable officer thought at the  
5 time, and what that specific officer knew at the time  
6 they pulled the trigger. That's what they are to be  
7 judged on, what that specific officer knew at the time  
8 they pulled the trigger. That's what they are to be  
9 judged on. Can they articulate their actions and would  
10 another reasonable officer do the same.

11 Q. What you just described to me in terms of the  
12 fact that she had weapons in the car and he could  
13 potentially have posed a threat to other people and not  
14 herself, isn't that a speculative concern about  
15 potential danger?

16 MR. HALLORAN: Objection.

17 A. Yes.

18 BY MS. GELSOMINO:

19 Q. Is it the position of the department that  
20 speculative concern about potential danger can justify  
21 deadly force?

22 MR. HALLORAN: Objection.

23 A. If the officer at the time she pulled the  
24 trigger believed him to be a threat to the public I  
25 would say yes.

1 BY MS. GELSOMINO:

2 **Q. Even if she considered at the time that he could**  
3 **present a future threat to the public --**

4 A. It was an apartment complex that had a lot of  
5 people out that day, so I believe she thought, this guy  
6 did a home invasion, now he has access to weapons, he's  
7 bold enough to steal a police car, in her mind he posed  
8 a threat to the public.

9 **Q. And that's because of something he might do in**  
10 **the future?**

11 MR. HALLORAN: Objection.

12 A. That he had the capability to do based on what  
13 she was describing.

14 BY MS. GELSOMINO:

15 **Q. Okay. So, is it the department's position that**  
16 **if an officer believes that a person has the capability**  
17 **of potentially committing harm in the future that that**  
18 **can justify the use of deadly force?**

19 MR. HALLORAN: Objection.

20 A. No. Your use of the terminology in the future  
21 is what I take exception with in this particular case.  
22 I believe that she felt that he was, you know, pretty  
23 much on a crime spree there. He committed a home  
24 invasion, he chases a police officer, he steels her  
25 cruiser, the cruiser has weapons in it, it's a densely

1 populated area, and she believed that he was a danger to  
2 the public right then and there. I don't believe  
3 necessarily that your use of in the future was what she  
4 was thinking at the time she pulled the trigger.

5 BY MS. GELSOMINO:

6 **Q. Is it the division's position that the use of**  
7 **deadly force in that instance was justified and within**  
8 **policy?**

9 A. Yes. Let me rephrase that. They felt that the  
10 firing at her cruiser was not within policy. It wasn't  
11 the best choice that she made, but it didn't raise to  
12 the level of a criminal offense.

13 **Q. Well, explain that to me. What was the**  
14 **violation of the policy in that case?**

15 A. I'm not really sure. It states right there, but  
16 I'd have to look it up, and that's all changed.  
17 Violation Rule of Conduct 1.20 and Division Directive  
18 3.25 2(b) 3(b), I don't really know what those are. I  
19 think if I had to guess I believe that's the part about  
20 firing at a moving vehicle, and she did receive  
21 departmental charges for that and she did forfeit  
22 vacation time. I don't know. It was substantial. I  
23 don't remember how much.

24 **Q. Is it the division's position that she**  
25 **reasonable believed -- strike that. Is it the**

1 department's position that the use of deadly force in  
2 this circumstance was justified?

3 A. Yes. I believe so. I believe that the fact  
4 that she was not charged with a violation of that, I  
5 believe they believed that she was acting within the  
6 scope of her duties, therefore, it did not raise to the  
7 level of criminal misconduct.

8 Q. Is it the department's position that that use of  
9 deadly force was reasonable?

10 A. Yes.

11 Q. Okay. This one here PIS 12-18. Take a look and  
12 tell me if you remember this incident.

13 A. I don't recall this one to be honest with you.

14 Q. Okay. So do you know whether or not that there  
15 was ever an allegation that at the time this person was  
16 shot that he posed an imminent threat of death or bodily  
17 harm?

18 MR. HALLORAN: Objection.

19 A. As I said, I don't remember this case. There's  
20 a possibility that I wasn't the scene sergeant. I may  
21 have been, but I don't recall this case. However, based  
22 on what it says that he exited the door with a handgun,  
23 I don't know what he did with that handgun to justify  
24 them firing at him. If a robbery suspect exits a  
25 residence with a handgun in his hand, I think the

1 officers would have a reason to feel an active threat at  
2 that moment.

3 BY MS. GELSOMINO:

4 **Q. It's not appropriate for an officer to use**  
5 **deadly force just because a person is in possession of a**  
6 **handgun, right?**

7 A. No. The officers would have to feel that their  
8 lives were in danger, did they believe that the suspect  
9 was about to fire upon them. They would have to  
10 articulate that in a formal statement.

11 **Q. It's not appropriate for an officer to use**  
12 **deadly force on a suspect who is fleeing?**

13 A. No. You're allowed to use force on a fleeing  
14 felon if we believe them to be a danger.

15 **Q. If you believe them to be a danger?**

16 A. Yes.

17 **Q. But you have to have that last part, right?**

18 A. Correct.

19 **Q. An officer is not permitted to use deadly force**  
20 **against a fleeing felon, even if they're in possession**  
21 **of a handgun without something more, right?**

22 MR. HALLORAN: Objection.

23 A. This is speculation on my part, but if the  
24 officers said this person had just committed a robbery  
25 and is running through a neighborhood with a handgun

1 that he would pose a danger to other people in that  
2 area, so I believe that's one of the cases, I think  
3 articulated that, that would be justification.

4 BY MS. GELSOMINO:

5 **Q. This is another one where the case was cleared**  
6 **by the arrest of the person who was shot, right?**

7 A. It appears so. I don't know why I didn't go  
8 back and update the name of that suspect. It appears  
9 that suspect was arrested and entered a guilty plea for  
10 the burglary and sentenced to eight years incarceration.

11 BY MS. GELSOMINO:

12 **Q. Can a Columbus Division of Police Officer shoot**  
13 **a person that commits a robbery with a gun after the**  
14 **completion of the robbery?**

15 MR. HALLORAN: Objection.

16 A. If they feel that he's a threat to themselves or  
17 others.

18 BY MS. GELSOMINO:

19 **Q. Okay. There has to be an articulation of some**  
20 **factors to give rise to a threat beyond the fact that he**  
21 **just completed a robbery with a gun, right?**

22 MR. HALLORAN: Objection.

23 A. Yes.

24 BY MS. GELSOMINO:

25 **Q. Okay. This next one, 12-19, which involved the**



1     **shooting of David Richardson.**

2     A.       Okay. I do recall this one.

3     **Q.       Tell me what you recall about whether or not**  
4     **there was any allegation at the time of the shooting**  
5     **whether the person posed an actual and imminent threat.**

6     A.       Again, I don't remember the absolute specific  
7     wording in the formal statement, but it was officer  
8     Richardson's belief that based on his experience in that  
9     neighborhood and with armed individuals that this  
10    individual had gone for a weapon, he felt that his life  
11    was in danger, and he did not want to wait for the  
12    suspect to fire upon him, and fired his weapon at the  
13    individual.

14           At that time we could not prove nor disprove if  
15    this person actually had a weapon because we never  
16    recovered one from the scene. We did look extensively,  
17    but there was a foot pursuit, the suspect had time to  
18    get rid of a weapon if he had had one, and we never  
19    found one at the scene.

20    **Q.       So then, did you include that he did not have**  
21    **one?**

22    A.       We did not make a conclusion on that. We could  
23    neither approve nor disapprove if he had a weapon at the  
24    time. He made the gesture as if going for a weapon.

25    **Q.       Okay. So there was never any evidence or**

1 allegation that he was actually touching a firearm at  
2 the time that he was shot, right?

3 A. We could not prove that, no.

4 Q. No officer ever even made that allegation,  
5 right?

6 A. The officer that fired believed he was going for  
7 a weapon.

8 Q. Was going for a weapon, not that he had a  
9 weapon, right?

10 A. No.

11 Q. So there was never any allegation that  
12 Mr. Richardson was touching a weapon or had a weapon in  
13 his hand at the time that he was shot by the officer,  
14 right?

15 A. Yes. There was an allegation by the involved  
16 officer. The officer believed based on his experience  
17 that that neighborhood -- if I'm remembering this  
18 correctly, I believe he referred to it as chicken  
19 winging it. It's when the person reaches for their  
20 waistband and their elbow comes up like a chicken wing.  
21 And in his experience he believed he was going for a  
22 weapon.

23 Q. Okay. He never saw a weapon?

24 A. He never saw a weapon, no.

25 Q. Okay. In this case because it was nonfatal did

1     **CIRT make the determination about whether or not to**  
2     **bring criminal charges against the officer?**

3     A.       Yes. We decided that he was acting upon the  
4     scope of his duties, therefore, it didn't rise to  
5     criminal charges. I believe he was found outside of  
6     policy for that one.

7     **Q.       What did you base the determination of CIRT that**  
8     **this officer was acting within the scope of his duties?**

9     A.       Well, this suspect had just struck an officer  
10    with his vehicle. There was a long chase, vehicle  
11    chase. The suspect wrecked into another vehicle, bailed  
12    out on foot, and then the officer believed that the  
13    suspect was going for a weapon and fired. The officer  
14    during the formal statement stated that he was in fear  
15    for his life because he believed this suspect was  
16    reaching for and going to pull a weapon upon him.

17   **Q.       Even though he never saw a weapon and even**  
18   **though no weapon was ever recovered?**

19   A.       That's correct.

20   **Q.       You claimed earlier that there was ample time**  
21   **for him to get rid of a gun?**

22   A.       There was.

23   **Q.       Was there ample time for this subject to have**  
24   **gotten rid of the gun between the time that he was shot**  
25   **and the time that he was taken into custody?**

1 A. I don't believe he was shot. He was not struck  
2 by a bullet. He was injured out of the apprehension,  
3 but he was not shot.

4 Q. He was just shot at?

5 A. He was shot at.

6 Q. There was a time between the time that he was  
7 shot and at the time he was taken into custody?

8 A. Yes.

9 Q. Okay. Let's look at this one PSI 12-20.

10 A. This is going to be a long day.

11 Q. Yeah.

12 A. Okay. I don't think I was the scene sergeant at  
13 this one. I do recall it happening, but I don't believe  
14 I was the scene sergeant there.

15 Q. All right. This is another one where CIRT would  
16 have made the findings about criminal allegations,  
17 right?

18 A. Yes.

19 Q. What was the basis of -- did CIRT determine not  
20 to file any criminal charges against the officer?

21 A. That's correct.

22 Q. Why?

23 A. Again, I believe it was because he was found not  
24 to be acting within the scope of his duties at the time  
25 of the shooting.

1       **Q.           Based on what?**

2       A.           I don't really recall on this one. I don't  
3       know. I want to say he was found not within policy. I  
4       seem to remember this may have been a startle response,  
5       but I'm not positive of that.

6       **Q.           When you do these summaries do you include all**  
7       **of the facts that are relevant for determining whether**  
8       **or not the use of force would have been reasonable?**

9       A.           No. This is just to notify the chain of command  
10      just bare bones overview that there was a PIS that  
11      night. This is not used for justification of anything.  
12      This is pretty much a summary of who, what, where, when,  
13      notification of incident. The CIRT package is what  
14      determines all of that.

15      **Q.           Do you include facts in here to help refresh**  
16      **your recollection about why the shooting was --**

17      A.           I'm sorry, you faded out there.

18      **Q.           Do you include enough facts in these summaries**  
19      **to just refresh your recollection about why the shooting**  
20      **was not criminal?**

21      A.           No. I do not do that.

22      **Q.           Okay.**

23      A.           That's not the purpose of this document.

24      **Q.           The last one for this year, PIS 12-24. Take a**  
25      **look at that, please.**

1 A. Okay. I did respond to the scene.

2 Q. Okay. And this was another one where CIRT did  
3 not recommend any criminal charges?

4 A. Correct.

5 Q. Why?

6 A. Because I'm sure that the involved officers were  
7 found to be acting within the scope of their duties and  
8 the evidence did not raise to criminal intent.

9 Q. Based on what?

10 A. I don't specifically remember how these officers  
11 justified their actions, but this was someone who had  
12 just committed an armed robbery. He had a handgun. It  
13 was later determined to not be a real weapon. You can't  
14 judge the officers on that unless during the course of  
15 the formal statement you asked them and they believed it  
16 was a fake gun from the very get-go. Often times they  
17 believed this to be a real gun. The person just robbed  
18 the BMV, he ran, I believe he had the gun in his hand.  
19 I don't recall why Officer Brenner struck him. I want  
20 to say he was running toward another SWAT officer that  
21 had the other side and then he ran back away with the  
22 gun in his hand still, and I can't recall why SWAT  
23 Officer Sprague said he fired. I do recall he ran into  
24 a dance studio that was filled with toddlers and was  
25 apprehended inside there.

1       **Q.           Was he shot by the officer before he ran into**  
2       **the studio?**

3       A.           If the officer actually hit him. This small  
4       laceration was nothing really. I don't think we could  
5       prove it came from the officer's weapon. He was struck  
6       by a car, he was running, they tussled inside. I don't  
7       think we could prove he was actually struck.

8       **Q.           Whether or not an individual was struck by an**  
9       **officer should not impact the determination of whether**  
10      **or not that was justified or criminal or within policy,**  
11      **right?**

12                               MR. HALLORAN: Objection.

13      A.           No. No.

14      BY MS. GELSOMINO:

15      **Q.           Am I correct? Was my statement correct or**  
16      **incorrect?**

17      A.           You're saying whether they actually shoot them  
18      or miss it's the same circumstances as to why they  
19      fired, that's correct.

20      **Q.           Okay. So in this case, what were the**  
21      **allegations, if any, that at the actual time of the**  
22      **shooting he posed an actual imminent threat?**

23      A.           I don't specifically remember what they gave as  
24      their justification. This was eight years ago, and  
25      without having the package in front of me, I couldn't

1 really tell you specifically.

2 Q. Had you reviewed the package you would have been  
3 able to tell me, right?

4 A. Yes.

5 Q. Okay. I'm going to turn off this one for 2012.  
6 We'll mark this as Exhibit 5.

7 - - - -

8 (Thereupon, Plaintiff's Exhibit 5 was marked for  
9 identification.)

10 - - - -

11 BY MS. GELSOMINO:

12 Q. PIS 13-04, take a look at that, please.

13 A. Okay.

14 Q. So in this case what were the conclusions of  
15 CIRT?

16 A. The conclusions of CIRT were that there was not  
17 enough evidence to believe that the officer had criminal  
18 intent, that he was acting within the scope of his  
19 duties as a law enforcement officer, and that the firing  
20 of his weapon, he believed he was under threat at the  
21 time that he fired the weapon.

22 Q. What do you mean by "criminal intent" in this  
23 context?

24 A. Criminal intent is, as we discussed before, in  
25 order for a police officer to be charged criminally with



1 a crime out of one of these incidents, they have to be  
2 acting outside the scope of their duties as a law  
3 enforcement officer. If they're attempting to do their  
4 job the way they've been trained to do their job and  
5 they're acting in good faith and articulate their  
6 actions, then it may be a out-of-policy shoot, but not  
7 necessarily enough to raise to the level of charging the  
8 officer with felonious assault. Does that make sense?

9 **Q. What do you need to prove to charge an officer**  
10 **with felonious assault?**

11 A. That they were not acting within the scope of  
12 their duties. That they had a malicious intent. That  
13 they were not in fear of their life. They did not feel  
14 threatened at the time that they fired.

15 **Q. Not threatened, not in fear, not acting with**  
16 **malicious intent?**

17 A. Acting with malicious intent, not within the  
18 scope of their duties as a police officer.

19 **Q. Is it possible for an officer to be acting in**  
20 **good faith but unreasonably?**

21 A. Yes.

22 **Q. Is it possible that an officer was acting in**  
23 **good faith but without malicious intent and yet still**  
24 **uses deadly force when they're not reasonably in fear of**  
25 **their life?**

1 MR. HALLORAN: Objection.

2 A. Are you saying could that happen and it not be a  
3 crime?

4 BY MS. GELSOMINO:

5 **Q. Could that happen, period?**

6 A. Could that happen -- I'm sorry. Could you just  
7 repeat that question, please.

8 **Q. If an officer was acting without any malicious**  
9 **intent, yet uses deadly force when it was not reasonable**  
10 **to believe that the suspect presented a imminent threat**  
11 **of death or great bodily harm?**

12 MR. HALLORAN: Objection.

13 A. I'm still confused what the question is. Could  
14 they use deadly force without malicious intent, but  
15 within the scope of their duties? Is that what you're  
16 trying to get at?

17 BY MS. GELSOMINO:

18 **Q. I still don't understand what you mean when you**  
19 **say within the scope of their duties.**

20 A. So law enforcement officers are allowed to use  
21 deadly force to protect themselves and others from an  
22 active threat. If the officers are acting within the  
23 scope of their duties, which means the officers are  
24 acting the way they're trained to act, they're on a run,  
25 they were doing what they're supposed to be doing and

1 they fire their weapon, if they can articulate their  
2 actions and it's supported by witness testimony and  
3 physical evidence that they felt threatened at the time  
4 of the shooting, then it would not raise to the level of  
5 a crime. They may be outside of an administrative  
6 policy. It may be a bad police shooting based on their  
7 decision-making and the policies of the division, but  
8 not necessarily a crime. Does that make sense?

9 **Q. Yeah. An officer can commit felonious assault**  
10 **ever without having malicious intent, right?**

11 **A. Yes.**

12 **Q. All right. So in this case with Mr. Trussle**  
13 **that you just reviewed, what was the allegation that at**  
14 **the time of the shooting he posed an actual threat of**  
15 **death or great bodily harm?**

16 **A.** Again, I can't specifically tell you because I  
17 don't remember exactly what the officer said, but I  
18 think I could get in the ballpark. I believe the fact  
19 that the person was a -- had a felony warrant for a  
20 violate crime and was fleeing from the officers being  
21 able to arrest them. This individual was found in a  
22 shed. I seem to believe the officer saying that there  
23 were any number of -- they didn't know if this guy was  
24 armed. There were any number of things in a shed that  
25 could be used as a weapon, and when the guy burst out

1 the door at him he fired his weapon because he was in  
2 fear that this person was attacking him.

3 I believe that did not raise to the level of a  
4 crime. I believe the fact that he could not articulate  
5 actually seeing a weapon in the individual's hands was  
6 why he was found out-of-policy. He received discipline  
7 for that, and the Fraternal Order of Police grieved it,  
8 and for whatever reason the arbitrator sided with the  
9 officer, therefore, they were required to reverse their  
10 decision on the policy violation.

11 **Q. Do you think that the arbitrator made the wrong**  
12 **decision?**

13 A. The decision of the arbitrator is binding, so it  
14 really doesn't matter what I think.

15 **Q. I know, but what do you think?**

16 A. I believe in this case that the officer was  
17 afraid. I do believe he felt that he was being  
18 attacked, but I believe that the shot was more of a  
19 startle than it was intentional. Even though I  
20 specifically remember asking him during the formal  
21 statement if he intentionally fired or if it was a  
22 startle response, and he said that he intentionally  
23 fired.

24 **Q. Did you decide not to bring criminal charges in**  
25 **this case because you believed it was a startle**

1 **response?**

2 A. No. I believed that it was not criminal because  
3 he was acting within the scope of his duties as a law  
4 enforcement officer and he articulated what he believed  
5 at the time he pulled the trigger, an articulable fear  
6 of threat.

7 **Q. He could not articulate that he ever saw a**  
8 **weapon on this person, right?**

9 A. No. He did not.

10 **Q. So how could it be noncriminal to use deadly**  
11 **force when this officer could not articulate that the**  
12 **person was armed at the time that he was shot?**

13 MR. HALLORAN: Objection.

14 A. He could not articulate, and again, I'm trying  
15 to recall this from memory. I don't have it sitting in  
16 front of me, but I believe that he was articulating that  
17 he wasn't going to wait for this guy to, you know, use  
18 the weapon against him. There was so many potential  
19 weapons that could be found inside a shed, he didn't  
20 know if this guy actually had a weapon on him, and when  
21 he burst through the shed door and came at the officer  
22 he believed that his life was in jeopardy.

23 BY MS. GELSOMINO:

24 **Q. So this officer fired because of things that he**  
25 **thought might happen, right?**

1 A. It is what he knew at the time that he pulled  
2 the trigger, yes.

3 Q. Those are all things that he thought might  
4 happen?

5 A. Well, being afraid of a potential threat is one  
6 way of articulating your actions. They don't have to  
7 wait to be shot or stabbed. That's something that they  
8 don't have to wait to do.

9 Q. Do you agree with me that he articulated a  
10 potential threat not an imminent threat?

11 MR. HALLORAN: Objection.

12 A. In my mind, yes. In his mind I believe he felt  
13 it was imminent.

14 BY MS. GELSOMINO:

15 Q. Okay. But you agree that he articulated a  
16 potential threat, right?

17 A. Yes.

18 Q. And a potential threat is very different than an  
19 imminent threat, right?

20 A. Yes.

21 Q. So how -- was the finding then, the conclusion  
22 of the division of police, that even though this officer  
23 used deadly force in the face of only a potential  
24 threat, not an imminent threat, that he did not commit  
25 any crime?

1 A. Yes.

2 Q. Okay. Does the division of police policy allow  
3 for a potential threat to serve as justification to use  
4 deadly force?

5 A. It depends on the case and how the officer  
6 articulates their actions at the time.

7 Q. So if an officer articulates what he believed to  
8 be a potential threat, does the CPD policy permit use of  
9 deadly force in that case, in that circumstance?

10 A. If that officer was acting within the scope of  
11 their duties as a law enforcement officer and they felt  
12 a threat at the time they pulled the trigger, then, yes.

13 Q. Even if the only threat that they could  
14 articulate was a potential threat?

15 A. Yes.

16 Q. You still believe that would be a use of force  
17 within the policy --

18 A. No. Not within policy. There's a difference  
19 here. It wouldn't raise to the level of filing a  
20 criminal charge against the officer, but it would be  
21 out-of-policy.

22 Q. Okay. I still don't understand why that's not  
23 criminal in this case. How is that not felonious  
24 assault?

25 MR. HALLORAN: Objection.

1 A. So there's a difference between someone getting  
2 into a fight and intentionally causing serious physical  
3 harm against someone and an officer doing their job, and  
4 while they're acting -- they're attempting to act within  
5 the scope of their duties. Officers are given a certain  
6 leeway by the courts because of the dangerous jobs that  
7 they do and making split second decisions.

8 BY MS. GELSOMINO:

9 **Q. I understand that. But if an officer is acting**  
10 **outside of policy, then he's not within the scope of his**  
11 **duties as a police officer, right?**

12 MR. HALLORAN: Objection.

13 A. Not necessarily, no. They could be acting  
14 within the scope of his duties as a police officer,  
15 attempting to do everything right, but maybe make a bad  
16 decision. Maybe not be as tactically sound as they  
17 could have been and be out-of-policy. They weren't  
18 overtly intending to commit a crime. They were doing  
19 their job and made a bad decision, therefore, instead of  
20 filing a criminal charge against them, what they did was  
21 they were outside of policy administratively.

22 BY MS. GELSOMINO:

23 **Q. Is it the position of the division of police,**  
24 **then that an officer can use deadly force in the absence**  
25 **of an immediate threat of death or great bodily harm and**



1     **do so legally?**

2                             MR. HALLORAN:  Objection.

3     A.           I believe that's on a case-by-case basis, and I  
4     believe it's how the officer articulates their actions.  
5     It's going to be what the officer believed at the time.

6     BY MS. GELSOMINO:

7     **Q.           Right.**

8     A.           That's what their judged on.

9                             MS. GELSOMINO:  All right.  I'm going  
10    to take a quick bathroom break and we can move on.

11                            - - - -

12           (Thereupon, an off-the-record discussion was held.)

13                            - - - -

14    BY MS. GELSOMINO:

15    **Q.           Okay.  So we're looking at this one, PIS 13-19,**  
16    **regarding the shooting of James Robert Barber.  What do**  
17    **you know about that case?**

18    A.           I was at that scene, if I recall this correctly.  
19    This was -- I believe this was an incident where it was  
20    a motel that had rooms on the top and bottom and there's  
21    a balcony going around the second floor, and there were  
22    a group of construction workers that were in town for  
23    the job and were staying at the hotel.  There was a lot  
24    of alcohol flowing, and the one individual in question  
25    was threatening to stab himself.  One of the other

1 individuals in the room called the police and said,  
2 "hey, this guy is really upset and he's going to try and  
3 stab himself."

4 The officers responded. There were two  
5 officers, a female and a male officer. Schoolcraft was  
6 the male officer. As they approached they were walking  
7 along the balcony, the door flies open, the female  
8 officer is standing in the doorway, and the individual  
9 that was threatening to stab himself is rushing the  
10 officer. The involved officer said that he believed  
11 that he was firing to protect the life of the female  
12 officer that was standing in the doorway that was being  
13 rushed by the man who said he was going to stab himself.  
14 He saw a silver metallic object in the subject's hands  
15 and fired one-time and shot him in the shoulder. That  
16 was the case.

17 **Q. What, if any, allegations were there that at the**  
18 **time of the shooting the person actually posed an**  
19 **imminent threat?**

20 **A.** Well, to the officer that fired the round he was  
21 working off the premise that this person was in an  
22 agitated mental state, he had threatened to do harm to  
23 himself, which all officers are trained that if you're  
24 suicidal, you're homicidal. The guy threatened to stab  
25 himself, so he believed him to be armed. As the door

1 flew open, he believed he saw a shiny silver object in  
2 the guy's hand when he was coming at the officer. You  
3 know those balconies are real short. There's only maybe  
4 two-and-a-half, three feet of balcony there outside the  
5 doorway. The officer is up against the balcony railing  
6 and the door opens and this guys comes out.

7 Schoolcrafts makes the decision to fire to protect this  
8 officer.

9 **Q. Did he actually have a knife?**

10 A. He did not have a knife. He actually had two  
11 silver forks that he had. It was not a knife, but it  
12 did corroborate the fact that the officer may have seen  
13 a shiny metallic object.

14 **Q. Were the forks recovered?**

15 A. Well, that was an error. The forks were not  
16 recovered. That was a mistake that was made. We  
17 witnessed them at the scene, but crime scene did not  
18 collect those at the time.

19 **Q. Where did you witness them at the scene?**

20 A. Where the suspect was apprehended. There were a  
21 couple of forks and a couple of other things that had  
22 been in his pocket and they were laying there right at  
23 the apprehension scene by his clothing that the medics  
24 cut off of him.

25 **Q. Where were the forks at the time that he was**

1 **shot?**

2 A. That we don't know. That was prior to us  
3 arriving that the officers had patted him down and taken  
4 those off of him. I don't specifically recall what  
5 those officers said, where they took those forks off of  
6 the individual.

7 **Q. That would have been an important fact to know**  
8 **in terms of determining whether this officer acted**  
9 **appropriately, right?**

10 A. Yes.

11 **Q. Do you believe that it's reasonable that the**  
12 **officer mistook two forks to be a deadly weapon?**

13 A. Yes. I do believe that.

14 **Q. Why?**

15 A. I believe those to be -- you know, the forks  
16 were shiny metal and silver, which is what he said he  
17 saw. He believed in that split-second to be a knife.  
18 Probably based on the fact that this original run was  
19 that this guy was going to stab himself, which in his  
20 mind said knife, and when he sees the shiny silver thing  
21 in the guy's hand, he's thinking knife, and he believes  
22 his partner is in danger there, which led him to fire to  
23 protect her life.

24 **Q. Is it possible that an officer might believe**  
25 **subjectively that he's facing a threat, but his belief**

1 **is not objectively reasonable?**

2 MR. HALLORAN: Objection.

3 A. So let's go back to what the officer knew at the  
4 time they pulled the trigger.

5 BY MS. GELSOMINO:

6 **Q. I'm asking you a general question.**

7 A. Could you put it in context?

8 **Q. You want to talk about what the officer had in**  
9 **his or her head at the time of the shooting. That's a**  
10 **subjective belief that the officer holds, right?**

11 A. It's what the officer believed at the time they  
12 pulled the trigger, which is what we're required to  
13 judge them upon.

14 **Q. For what?**

15 A. We're basing this on Graham vs. Connor. Graham  
16 vs. Connor says you judge the officer based on the facts  
17 known to them at the time they pulled the trigger,  
18 without hindsight 20/20. A police officer has a very  
19 dangerous job and they have to make split-second  
20 decisions, and they may be wrong, but they gave them  
21 leeway there because of the dangerous nature of the job  
22 and the fact that they make split-second decisions.

23 It's what they knew or believed at the time they  
24 pulled the trigger, not necessarily what the  
25 investigation revealed afterwards. Is it reasonable for

1 that officer to assume that going to a run where a  
2 person is threatening to stab himself with a knife, and  
3 in that split-second when he opens the door and he sees  
4 a shiny silver object, that he would put two and two  
5 together and believe that to be a knife even though he  
6 was wrong. That's the premise that we're looking at.  
7 What did he believe at the time that he pulled the  
8 trigger, and he believed that to be a knife.

9 The brain is a funny thing. I don't care how  
10 many times he could have showed him those forks, he  
11 would still in his mind believe that that guy was  
12 holding a knife. It's just one of those things. And he  
13 believed his partner's life was in danger. That this  
14 guy was going to stab his partner, and he fired his gun.

15 **Q. Have you ever heard of a use of deadly force**  
16 **that you believe to have been unreasonable?**

17 A. To be unreasonable?

18 **Q. Yes.**

19 A. Since I've been the team leader of the CIRT team  
20 we have not found any charges on officers out of these  
21 police involved shootings. And I would say that's based  
22 on the fact that given what the totality of the  
23 circumstances in the investigation and based on what the  
24 officer knew at the time they pulled the trigger, it did  
25 not raise to the level of a criminal charge.

1       **Q.       Are you aware that this case that we're**  
2       **discussing right now with James Barber resulted in a**  
3       **settlement from the City of Columbus?**

4                       MR. HALLORAN:  Objection.

5       A.       I'm sorry.  Which one?

6       BY MS. GELSOMINO:

7       **Q.       Barber.**

8       A.       No.  I'm not aware of that.

9       **Q.       Do you think there was any wrongdoing by any**  
10       **officer in that case?**

11       A.       Do I think there was any wrongdoing?  There were  
12       two different perspectives in this case.  One  
13       perspective was the female officer believed that  
14       Mr. Barber never took his hands out of his pockets.  If  
15       you go by what that officer says, then it would make the  
16       shooting of Mr. Basher inappropriate.  However, like I  
17       said, you have to use the totality of the circumstances  
18       in that case.  Just like I said, the brain works in  
19       mysterious ways.  Even though we showed him the forks,  
20       he would think it was a knife.  There's also the  
21       possibility that in that split-second, being approached  
22       by that suspect that she couldn't really recall where  
23       his hands were.  That was her testimony, so we took it  
24       as true to her.

25               Basically the thing that made me question that

1 was the shiny silver forks. The officer's testimony was  
2 that he saw a shiny silver object in the guy's hand, and  
3 these shiny silver forks were actually taken off of this  
4 guy, which makes me believe that the officer did see  
5 something shiny and silver in the guy's hands, but  
6 didn't know it wasn't a knife. But he also believed  
7 that this guy was attacking his partner, and that's why  
8 we made the decision that we made.

9 **Q. This woman who gave a statement saying that**  
10 **Mr. Barber never took his hands out of his pants, was**  
11 **that an officer?**

12 A. Yes.

13 **Q. So in this case you had an officer statement**  
14 **that directly contradicted the statement of the shooting**  
15 **officer, and if believed would have rendered this**  
16 **shooting a bad one, right?**

17 A. Correct.

18 **Q. And yet the division of police credited the**  
19 **shooting officer's statement?**

20 A. Yes. Because I believed it was based on the  
21 totality of the entire investigation. Officer witnesses  
22 do the best that they can, but they could be mistaken as  
23 well. I think the decision on this particular case was  
24 based on the totality of the information we had at hand.

25 **Q. The shooting officer also could have been**



1 **mistaken, right?**

2 A. The shooting officer also could have been  
3 mistaken. That's true.

4 **Q. Okay. PIS 13-22. Take a look at that.**

5 A. I don't recall this investigation at all.

6 **Q. Do you know whether there were any allegations**  
7 **at the time of the shooting that this person,**  
8 **Mr. Crocket, presented an actual imminent threat of**  
9 **death or great bodily harm?**

10 A. Again, as I said, I don't recall this particular  
11 incident, but in charges, we charged him with aggravated  
12 menacing, and we only file that charge when the suspect  
13 has pointed a gun at the officer. I would say if the  
14 suspect was pointing the gun at the officer enough that  
15 we would file aggravated menacing charges, and he plead  
16 guilty to that, that the officer felt that his life was  
17 in danger.

18 **Q. But you don't remember?**

19 A. I don't remember the case. I really don't.

20 **Q. Okay. Let's look at this one PIS 13-24. This**  
21 **is the shooting of Dabron White. Take a look at that**  
22 **one, please.**

23 A. Okay.

24 **Q. In this case were there ever any allegations**  
25 **that at the time of the shooting Mr. White presented an**

1 **actual imminent threat of death or great bodily harm?**

2 A. So I don't recall exactly what the officer  
3 articulated. I do recall this incident. I'm trying to  
4 remember. I know there was a gun found in the vehicle  
5 and the officer saw that gun as they ran by the  
6 suspect's vehicle. I seem to remember the officer  
7 saying that based on our training if there's one gun,  
8 there's more guns. This civilian suspect ran into a  
9 ravine and there were two officers involved. I remember  
10 that the civilian suspect did follow some commands and  
11 got down on the ground and was kneeling and there was a  
12 chopper overhead. I do remember that. I don't recall  
13 what the officer articulated as to why he fired at the  
14 suspect. I believe it was found out-of-policy because  
15 the suspect was found to be unarmed.

16 **Q. If the officer shot an unarmed man who was on**  
17 **his knees at the time that he was shot, is that correct?**

18 A. Yes. I believe so.

19 **Q. So this officer shot an unarmed man in a**  
20 **position of surrender at the time that he was shot?**

21 A. No. He followed the initial commands to get on  
22 his knees, but if I'm remembering this correctly, it's  
23 been quite a while, but what they said was that he went  
24 from having his hands in the air in a kneeling position  
25 to bending over and reaching for his waistband, and they

1 believed that he was going for a weapon and they fired.

2 **Q. Okay. So they shot an unarmed man while he was**  
3 **on his knees and they never saw a weapon on that man,**  
4 **correct?**

5 A. They saw a weapon in the suspect's vehicle as  
6 they ran by, which I believe that led them to believe  
7 that he may have another weapon on his person.

8 **Q. Okay. Would you agree with me that that's again**  
9 **a speculative fear?**

10 MR. HALLORAN: Objection.

11 A. So much of a police officer's job is to evaluate  
12 their surroundings. It's to take in everything and try  
13 and make sense of it. All of these things are what lead  
14 a police officer to take the actions that they take. If  
15 they said that they saw a gun, which we did find in the  
16 suspect vehicle, and that lead them to believe that the  
17 suspect had another weapon, and then a suspect actually  
18 makes a gesture as if going for a weapon, it would be  
19 reasonable for them to believe that the suspect might  
20 pull the weapon and fire upon them.

21 BY MS. GELSOMINO

22 **Q. The officers ran by a vehicle and saw a weapon**  
23 **in the vehicle, right?**

24 A. Correct.

25 **Q. That vehicle was far away from the suspect,**

1     **right?**

2     A.       I don't recall how far. He bailed out of that  
3     vehicle and ran. There was a foot chase. He ran down  
4     into a ravine. So it wasn't right next to him, no.

5     **Q.       Right. So he's down a ravine away from the**  
6     **vehicle?**

7     A.       Correct.

8     **Q.       He never went back to the vehicle at any point?**

9     A.       He did not.

10    **Q.       So now he's at the bottom of the ravine, and the**  
11    **car is at the top of the ravine and the officers know**  
12    **that, right?**

13    A.       Right.

14    **Q.       So then he's on his knees at the bottom of the**  
15    **ravine, and the officers never saw a gun on him, right?**

16    A.       No. They never saw a gun on him.

17    **Q.       Is it the division of police's determination**  
18    **that this officer was within policy and did not commit**  
19    **any criminal action when he shot at a person on his**  
20    **knees when the officers did not see a gun on that**  
21    **person?**

22                   MR. HALLORAN: Objection.

23    A.       No. There's two answers to that. One, they  
24    determined that it did not raise to the level of a  
25    criminal offense, however, they did find him in

violation of policy administratively.

BY MS. GELSOMINO:

Q. Your CIRT team made the determination that the officer did not commit a crime when he shot this unarmed man, right?

A. Correct.

Q. Based on that officer's belief that that suspect may have another gun because he had one up at the top of the ravine, right?

MR. HALLORAN: Objection.

A. And the fact that he was reaching for a weapon and felt that his life was in danger.

BY MS. GELSOMINO:

Q. It was the CIRT's position that it was reasonable for this officer to think that his life was in danger by a threat presented by an unarmed man in front of him on whom he did not see a gun, correct?

MR. HALLORAN: Objection.

A. Yes.

BY MS. GELSOMINO:

Q. There's no criminal action there according to the division, right?

A. Correct.

Q. What is the violation of the policy then?

A. It doesn't say. I don't know what they found it

1 in violation of. I'm guessing it was because the guy  
2 was unarmed, but I don't know that for sure.

3 Q. Do you agree with me that this officer's  
4 articulation of a fear was based on speculation that  
5 this person may be armed?

6 MR. HALLORAN: Objection.

7 A. Yes. I would agree that that was his belief.  
8 BY MS. GELSOMINO:

9 Q. And it was a speculative belief?

10 MR. HALLORAN: Objection.

11 A. Well, it's what he believed at the time.  
12 BY MS. GELSOMINO:

13 Q. All right. We're going to skip ahead to 2015.  
14 At the top of page five here PIS 2015-0005. This is the  
15 shooting of James England, right?

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 6 was marked for  
18 identification.)

19 - - - -

20 A. I can't see that.

21 BY MS. GELSOMINO:

22 Q. I should probably share the screen with you.

23 A. Okay.

24 Q. First of all, I understand that you were on the  
25 scene for the shooting of James England, right?

1 A. Yes.

2 **Q. Tell me everything that did you personally in**  
3 **relation to James England.**

4 A. I was the scene supervisor for that, so I called  
5 out a team and responded to the Dolby Drive address. We  
6 were briefed by the supervisor at the scene, and I  
7 determined that Detective Martin Kessner was the primary  
8 and handed out assignments at that time. We did the  
9 walk-through. I remember the attorney was Robert Byard  
10 at the time. I did the walk-through with Attorney Byard  
11 and Officer Abel. And then, I'm sure, I just supervised  
12 the rest of the scene. I don't recall specifically  
13 taking any actions.

14 **Q. Okay. Did you observe or participate in any**  
15 **interviews with any officers, suspects or witnesses?**

16 A. At the scene, I don't believe I interviewed  
17 anything at the scene. That's not my job.

18 **Q. How about at any time?**

19 A. I interviewed, I took the formal statement of  
20 Officer Abel.

21 **Q. Since this was a nonfatal shooting CIRT made the**  
22 **determination about whether or not to bring changes**  
23 **against Abel, right?**

24 A. Yes.

25 **Q. What was the determination of CIRT?**

1 A. That the officer was acting within the scope of  
2 his duties, but there was insufficient evidence to prove  
3 that he committed a crime.

4 **Q. Did you write that down somewhere?**

5 A. I was given it by legal.

6 **Q. Tell me again.**

7 A. So when we make that ruling on the nonfatal  
8 cases -- I can't remember when we decided to do this.  
9 It actually was at the promoting of the FOP attorneys,  
10 they were like, "why don't you put something in the  
11 package that states that." That's what we were  
12 instructed by our legal advisors. When this happens we  
13 always put at the conclusion of the CIRT package when  
14 we're not charging the officer with a crime that  
15 statement.

16 **Q. Who are the legal advisors?**

17 A. Jeff Furbee.

18 **Q. Does he work for the police department?**

19 A. He works for the City Attorneys Office, but he's  
20 assigned as the liaison for the Columbus Division of  
21 Police.

22 **Q. Did he review all of the findings of CIRT?**

23 A. I don't believe he's in that process, no.

24 **Q. So on what did you base your conclusion that**  
25 **Abel was acting within the scope of his duties, but**



1     **there was insufficient evidence to charge him with a**  
2     **crime?**

3     A.       Again, I don't specifically remember the  
4     complete details. I did review it prior to coming here.  
5     The officers were -- I'm sorry. They were looking up  
6     people that have warrants on their precinct and they saw  
7     that Mr. England had a felonious assault warrant, and  
8     some of the officers on the precinct were aware of  
9     Mr. England and his previous arrests. So they decided  
10    to go to Mr. England's residence to serve the warrant.  
11    Officers knocked on the front door and contacted someone  
12    inside. Eventually he admitted that it was him,  
13    Mr. England, and they told him to come out. He went out  
14    the back door instead. Officer Abel was at the back  
15    door. He was giving commands to Mr. England to  
16    surrender because he had the warrant. There was a  
17    locked -- it was a patio door, like a Florida room that  
18    had been destroyed at some point because there was no  
19    sides to it. There was plywood up the door and it was  
20    locked.

21           The officers were ordering him back to them over  
22    by the door and they attempted to place handcuffs on  
23    him. He, in their words, was resisting arrest, was not  
24    complying or partially complying, and there were also  
25    two pitbulls that had exited the house. There was a

1 fairly large dog door on the back of the residence and  
2 there were two pitbulls that were acting very aggressive  
3 toward the officer. As they're trying to handcuff the  
4 suspect, officer Abel is kind of vertically challenged,  
5 and he was up on the wood part of the door and the other  
6 part of his body was hanging through the window part of  
7 this screen door.

8 It was his testimony that he believed that  
9 Mr. England was violent, that he was serving a felonious  
10 assault warrant on him, that if Mr. England had pulled  
11 him through that window that he would have sustained an  
12 injury from being pulled through the window. That he  
13 was unsure if Mr. England had any weapons because they  
14 had not had a chance to pat him down or anything at that  
15 point. He also feared that he would be in jeopardy from  
16 the pitbulls that were acting aggressive, and that he  
17 fired because he felt he was being pulled through there  
18 and he was in fear of all of those things, and that's  
19 why he fired his weapon at Mr. England. Mr. England  
20 then fled through the doggy door back into the house.  
21 He was handcuffed at the time --

22 **Q. I don't need all the details here. I'm asking**  
23 **just for the facts that were pertinent to the conclusion**  
24 **of the CIRT team.**

25 **A.** That's what I'm trying to give you.

1       **Q.           Okay. This fleeing after the shooting**  
2       **impacted --**

3       A.       No. All of the things that Officer Abel said  
4       that he was in fear of happening if he actually got  
5       pulled through that window and over was his  
6       justification for firing his weapon.

7       **Q.           Was England handcuffed at the time that he was**  
8       **shot?**

9       A.       Yes.

10      **Q.           So you said that Abel was afraid that if he got**  
11      **pulled through the door he could be in danger, right?**

12      A.       He was being pulled through there at that time  
13      before he fired. He felt that if he hadn't fired that  
14      he would have been pulled through and those things would  
15      have happened. That was his justification for firing  
16      his weapon.

17      **Q.           There was no evidence at the time that England**  
18      **was shot that he possessed a firearm, right?**

19      A.       No.

20      **Q.           Am I correct in saying that?**

21      A.       Yes.

22      **Q.           So this -- there was no evidence that he had any**  
23      **kind of weapon whatsoever, right?**

24      A.       They had no idea if he had a weapon on him or  
25      not.

1 Q. Right. No idea?

2 A. No.

3 Q. So this fear, again, that Abel articulated that  
4 he felt at the time, would you agree with me that he  
5 articulated a fear of things that could possibly come to  
6 be?

7 MR. HALLORAN: Objection.

8 A. Yes.

9 BY MS. GELSOMINO:

10 Q. So Abel was articulating speculative fear,  
11 right?

12 MR. HALLORAN: Objection.

13 A. He was articulating what he believed was  
14 occurring, and he was being pulled through this window,  
15 and he felt that if he didn't take action these things  
16 were surely going to happen.

17 BY MS. GELSOMINO:

18 Q. But they weren't happening at the time that he  
19 shot, right?

20 A. He was being pulled through window. So yes,  
21 they were a threat to him.

22 Q. How was he being pulled through the window?

23 A. If I remember correctly, he had his left arm  
24 hooked through the right arm of the suspect, and the  
25 suspect was bending over and pulling him using that

1 inertia to pull the office through the window of the  
2 door.

3 **Q. What charges did the CIRT team consider for**  
4 **Abel, if any?**

5 A. For Abel, we did not consider criminal charges  
6 against Abel.

7 **Q. Why not?**

8 A. Because he was acting within the scope of his  
9 duties as a law enforcement officer and articulated  
10 threats that he was in fear for his life at the time he  
11 pulled the trigger.

12 **Q. At what point did you come to that conclusion?**

13 A. After we had all the facts of the investigation  
14 and pretty much after the formal statement.

15 **Q. When you arrived on scene the day of the**  
16 **shooting and you were briefed about what occurred, did**  
17 **you believe that it was most likely a legal shooting?**

18 A. When we first arrived the facts had changed from  
19 the time that we arrived until the formal statement.  
20 When we first arrived at scene the supervisor on scene  
21 had led us to believe that Officer Abel was shooting at  
22 the pitbulls and it must have been a ricochet or  
23 something that had hit Mr. England. That was the  
24 premise that we were working from at the time of the  
25 investigation at the scene.

1       **Q.           At what point did you realize that was an**  
2       **incorrect premise that the supervisor told you?**

3       A.           One of the CIRT detectives interviewed one of  
4       the officers at the scene, and in interviewing the  
5       officers at the scene he had made it sound as if at the  
6       time that Officer Abel fired the dogs were not in close  
7       proximity to Mr. England. I believe at that time I had  
8       that investigator go back to that officer witness and  
9       get more information. I believe the CIRT detective was  
10      Dana Crone, and the officer was Officer Dungey. I  
11      believe Officer Dungey had said that the dogs were  
12      running back and forth along the outside of the patio  
13      there from north to southeast of the patio. If they  
14      were doing that then, in our mind the dogs weren't  
15      anywhere close to Mr. England at the time that the shots  
16      were fired. At that time we didn't believe he was  
17      shooting at the dogs and there had to be a different  
18      reason for firing his weapon.

19      **Q.           Or could it have been there was no justification**  
20      **for firing his weapon?**

21                      MR. HALLORAN: Objection.

22      A.           We didn't know at the time. We were still in  
23      the beginning stages of the investigation.

24      BY MS. GELSOMINO:

25      **Q.           At that point was that even a possibility in**

1     **your head?**

2     A.       It's always a possibility. We're always running  
3     through everything, but I try not to really jump to a  
4     hard conclusion until we have all the facts.

5     **Q.       At that point even though you had been mislead**  
6     **by a supervisor you still believed that you would**  
7     **develop some justification for that shooting, right?**

8                     MR. HALLORAN: Objection.

9     A.       No. First of all, I don't believe that I had  
10    any way of knowing that was misled by the supervisor. I  
11    believe that's what the supervisor believed happened at  
12    that time. And also, it's not our responsibility to  
13    come up with a justification for the officer. The  
14    officer has to articulate their reason for firing their  
15    weapon and it has to match the testimony of the  
16    witnesses and the evidence at the scene. It's not for  
17    me to justify the officer's actions.

18    BY MS. GELSOMINO:

19    **Q.       Do you know whether that officer came up with**  
20    **that version of events that ended up not being correct?**

21    A.       I do not.

22    **Q.       Did you ever ask?**

23    A.       He was interviewed by detectives, and I believe  
24    that's what he told detectives was that he believed he  
25    had shot at the dogs. I'm not positive about that, but

1 I believe that's what he said. I have no reason to  
2 believe that the supervisor not believe that at the time  
3 he told me that.

4 **Q. Okay. But you did not base your conclusion that**  
5 **Abel's actions were legal on the fact that the dogs were**  
6 **there, right?**

7 A. No. I don't believe the dogs had anything to do  
8 with it other than him feeling that if he was pulled  
9 over he would be in danger of being attacked by the  
10 dogs, but I don't believe he fired at the dogs.

11 **Q. Do you believe it was a reasonable fear for him**  
12 **to think that if he was pulled over he would be in**  
13 **danger from the dogs?**

14 A. Yes, I do.

15 **Q. Do you believe this was an intentional shooting?**

16 A. Yes, I do.

17 **Q. Why?**

18 A. I don't believe it was accidental or  
19 unintentional. I believe he intended to fire his  
20 weapon.

21 **Q. Does danger from dogs allow an officer to shoot**  
22 **a person?**

23 A. It can.

24 **Q. When?**

25 A. Well, in this particular instance, Officer Abel



1 articulated that he was in a precarious situation there,  
2 that he was being pulled into this area with two  
3 pitbulls that he had repeatedly states and other  
4 officers had stated were acting very aggressively toward  
5 the officers. So I do believe it was reasonable for him  
6 to believe that if he had actually been pulled all the  
7 way through that window and landed on the patio that the  
8 dogs would attack him and do serious damage to him,  
9 which he would be allowed to protect himself by using  
10 deadly force.

11 **Q. Because of the threat of the dogs or because of**  
12 **the threat of the person?**

13 A. The threat of the dogs if a person pulled them  
14 all the way through.

15 **Q. Did you discuss the possibility of bringing**  
16 **criminal charges against Abel with legal counsel?**

17 A. No.

18 **Q. What was CIRT's conclusion in this case?**

19 A. CIRT's conclusion was that the officer was  
20 acting within the scope of his duties and there was  
21 insufficient evidence to bring criminal charges.

22 **Q. Was that conclusion ever revisited after FRB**  
23 **issued its findings?**

24 A. No.

25 **Q. Was that conclusion ever revisited after the**

1 **chain of command review of this case recommending**  
2 **discipline?**

3 A. No.

4 **Q. Why not?**

5 A. Because, again, this was a situation where the  
6 officer was acting within the scope of his duties, but  
7 had made a poor decision. It didn't raise to the level  
8 of a criminal charge, but it certainly was more looking  
9 at from a policy standpoint.

10 **Q. What made it a poor decision?**

11 A. I believe it was found out-of-policy because  
12 they felt he made an inappropriate decision. I don't  
13 know what that was, but I know it was found  
14 out-of-policy.

15 **Q. Do you believe that he made an inappropriate**  
16 **decision?**

17 A. I'm trying to really think how I'm going to  
18 articulate this. I had a hard time following exactly  
19 what Officer Abel was saying he did with the suspect,  
20 Mr. England. It was probably one of the most confusing  
21 formal statements that I had taken. If you've read  
22 that, you know it's painful. I kept going back to him  
23 and trying to get him to articulate his actions better.  
24 I think that Officer Abel did articulate a reasonable  
25 fear of what would happen to him if he was pulled

1 through that window, but as far as the tactics of how  
2 they were trying to take control of Mr. England through  
3 that locked door and through that tall window, I really  
4 felt that those were poor decisions. I did not believe  
5 that that was the best way to try and apprehend  
6 Mr. England at the time.

7 **Q. Do you think it was a reasonable way to try to**  
8 **apprehend him?**

9 MR. HALLORAN: Objection.

10 A. I just don't know how they thought it was going  
11 to be possible. They were trying to keep control of  
12 him. And I think part of it is they didn't want him  
13 going back in the house. They knew this guy was  
14 dangerous and they wanted to keep control of him, and  
15 once somebody had a hand on him they didn't want to give  
16 that up. I didn't know how they were going to be  
17 successful in actually apprehending him in the manner in  
18 which they were going about it.

19 BY MS. GELSOMINO:

20 **Q. Do you agree that that police officer shouldn't**  
21 **create dangerous situations that result in them --**  
22 **strike that. Do you agree that police officers should**  
23 **not create dangerous situations and then rely upon those**  
24 **dangerous situations they created to justify the use of**  
25 **deadly force?**

1 MR. HALLORAN: Objection.

2 A. It's not my job to give opinions on that. My  
3 job is to collect the facts of each individual case. I  
4 won't speak for the division on that question. I will  
5 say that the division does everything they can to train  
6 officers to make the right decisions, and sometimes in  
7 the heat of the moment and given the particular  
8 circumstances they're involved with, sometimes they  
9 don't. That doesn't necessarily mean that the  
10 subsequent officer involved shooting is not legal and/or  
11 in-policy. It just means that they need some work on  
12 those tactical decisions.

13 BY MS. GELSOMINO:

14 **Q. Making the right tactical decisions is important**  
15 **for a police officer, right?**

16 A. Yes.

17 **Q. And making incorrect or poor tactical decisions**  
18 **can create dangerous situations, right?**

19 A. Yes.

20 **Q. And they can be dangerous not just for the**  
21 **people immediately involved in the situation, but also**  
22 **anyone in the immediate vicinity, right?**

23 A. Potentially.

24 **Q. Officers have a duty to protect the suspects who**  
25 **they're attempting to take into custody, right?**

1 MR. HALLORAN: Objection.

2 A. I think they have a duty to use only that force  
3 necessary to effect the arrest.

4 BY MS. GELSOMINO:

5 Q. Police officers have a duty not to use deadly  
6 force unless they're faced with an imminent threat of  
7 death or great bodily harm, right?

8 MR. HALLORAN: Objection.

9 A. Based on the facts known to them at the time.

10 BY MS. GELSOMINO:

11 Q. Would you agree with me that's an important  
12 safety rule?

13 A. Yes.

14 Q. And, again, not just for the safety of the  
15 suspect but also for the police officers and for the  
16 community at large, right?

17 MR. HALLORAN: Objection.

18 A. Yes.

19 BY MS. GELSOMINO:

20 Q. It's dangerous for society to have police  
21 officers using deadly force when they're not confronted  
22 with an immediate imminent threat of death or great  
23 bodily harm, right?

24 MR. HALLORAN: Objection.

25 A. I think that's a generality that can't really

1 define every case on its merits.

2 BY MS. GELSOMINO:

3 **Q. How so?**

4 A. Well, the officers have policies and guidelines  
5 that they are to follow, but each individual case, they  
6 have to make split-second decisions based on what  
7 they're seeing at that time. The actions that a suspect  
8 is taking at that time. And they alone have to make  
9 that decision in that split-second to do what they  
10 believe is best based on what they know at the time they  
11 pull that trigger. So I don't believe -- I know where  
12 you're going. I don't believe that officers are  
13 intentionally putting themselves in bad tactical  
14 decisions. I believe that they're trying to do their  
15 job the best they can, and at the time they may have  
16 made a decision that wasn't the best decision at the  
17 time, but was the best decision that they could come up  
18 with at the time.

19 **Q. The division of police trains officers to make**  
20 **split-second decisions, right?**

21 A. As best they can, yes.

22 **Q. It's an expectation of police officers that**  
23 **they will make split-second decisions every day in their**  
24 **job, right?**

25 A. Yes.

1 Q. And even the split-second decisions that  
2 officers are expected to make every day in their job  
3 must be within the law, right?

4 A. Yes.

5 Q. Even the split-second decisions that officers  
6 make every day in their job still must be in compliance  
7 with the policies of the division of police, right?

8 A. Yes.

9 Q. When would it be safe for an officer to use  
10 deadly force in the absence of an imminent fear of great  
11 bodily harm or death?

12 MR. HALLORAN: Objection.

13 A. So the policy says that you can use force in  
14 that situation. I think what you're having a hard or  
15 maybe I'm not explaining it right, is the fact that  
16 there's a difference between what the officer knew at  
17 the time they fired, and later when we find out what  
18 actually occurred in the case through the investigation.  
19 If they believe it to be an imminent threat even though  
20 later we found out that it wasn't, that's what they were  
21 thinking, that's what they say their reason for firing  
22 was, then, whether it ends up being a threat or not, it  
23 was real to them in that moment.

24 BY MS. GELSOMINO:

25 Q. Regardless of what the subjective intent or

1 belief of the officer at the time is, can you give me  
2 any examples of any time where it is safe for a police  
3 officer to use deadly force in the absence of an --  
4 strike that.

5 Can you think of any time that it would be safe  
6 for an officer to use deadly force in the absence of a  
7 reasonable fear of imminent death or great bodily harm?

8 MR. HALLORAN: Objection.

9 A. No.

10 BY MS. GELSOMINO:

11 Q. The simple act of resisting arrest does not give  
12 rise for the justification of use of deadly force,  
13 correct?

14 A. Usually I would say no.

15 Q. Are you qualifying that answer somehow?

16 A. Well, sure. It's impossible for me to answer  
17 these with every variable. For instance, you have a  
18 female officer that's 5'1 and they're trying to  
19 apprehend a violent felon who is 6'4, 300 pounds. They  
20 may not have a weapon on them, but if they're violently  
21 resisting that officer and that officer feels that  
22 they're going to succumb to these injuries, that this  
23 person could take their weapon, in that particular case,  
24 that officer would be justified in using force. It's an  
25 unarmed individual, but they're much bigger.



1           There's different factors to take into account  
2     in all of these. That officer being smaller in stature  
3     and having the worst end of that fight feels that their  
4     life was in danger, sure. And that's just resisting  
5     arrest. The guy doesn't have weapons other than his  
6     hands, fists, feet, but that's resisting. There are all  
7     kinds of different variables out there that play a role  
8     in these. You have to take the totality of all the  
9     facts and what the officer knew at the time when you're  
10    making these determinations.

11   **Q.       In that case though that you just set forth,**  
12   **would it be the resisting, the fact that person was**  
13   **resisting that would lead to the justification for the**  
14   **use of deadly force, or the physical attack on a police**  
15   **officer?**

16   **A.       It would be the physical attack, but it started**  
17   **out as just resisting.**

18   **Q.       My question is just the resisting. In that case**  
19   **if the officer is arresting this giant man and all he's**  
20   **doing is just resisting but he's not physically**  
21   **attacking her, would that give rise --**

22   **A.       No. No. If there's resisting without that**  
23   **element. If they're just not following commands, that**  
24   **does not justify deadly force, no.**

25   **Q.       Okay. Let's move on. Let's look at this one.**

1     **The bottom of page ten, PIS 2015-0013.**

2     A.         Okay.

3     **Q.         Are you familiar with this case?**

4     A.         I am.

5     **Q.         And in this case what was the conclusion of**  
6     **CIRT?**

7     A.         That the officer was acting within the scope of  
8     his duties and there was insufficient evidence that he  
9     committed a criminal act.

10    **Q.         Based on what?**

11    A.         The totality of the investigation.

12    **Q.         What specific factors lead to that conclusion by**  
13    **CIRT?**

14    A.         So, I'm sure you're aware of the particulars of  
15    this case. While the officer was on another call for  
16    service, he was approached by the female saying there  
17    was an emergency, please come help. He went over to the  
18    house and the female that approached him, I believe it  
19    was her sister had put her hand through the window and  
20    was cut very badly. They called for a squad and the  
21    person that approached Officer Thomas was upset that the  
22    squad was taking too long to get there.

23               While the officer was speaking to them inside  
24    the house there was a dog in the living room that  
25    approached the officer. The officer placed his hand on

1 his weapon and asked the people there to take control of  
2 the dog. This dog then walked away, did not come at  
3 him. At the same time another dog came from deeper in  
4 the house, I believe the kitchen area, and charged the  
5 officer. The officer backed out of the residence,  
6 turned 90 degrees so as not to have the people inside  
7 house in his backdrop, and back pedalled away from the  
8 dog. The dog kept coming, he pulled his weapon and  
9 fired at the dog, and at the same time a four year old  
10 girl from inside the residence had stepped into the line  
11 of fire and was shot in the leg.

12 **Q. What was the basis of the officer's fear of**  
13 **immediate physical harm or death?**

14 MR. HALLORAN: Objection.

15 A. An aggressive dog attacking him.

16 BY MS. GELSOMINO:

17 **Q. I'm sorry. Did you say the dog bit him?**

18 A. Was attacking him.

19 **Q. How was he attacking him?**

20 A. Chasing him aggressively coming toward him. He  
21 had even turned and went out onto the front porch and  
22 the dog continued to pursue him.

23 **Q. Did the dog come outside of the house?**

24 A. Yes.

25 **Q. Was the dog shot outside of the house?**

1 A. Yes.

2 Q. Was the girl shot outside of the house?

3 A. The girl was shot in the doorway to the  
4 residence.

5 Q. How far outside of the house was the dog at the  
6 time that the officer shot?

7 A. The dog was outside the house and had made the  
8 same turn as the officer, and was on front of the patio  
9 area of the house.

10 Q. Did any other officer shoot?

11 A. He was the only officer there at the time.

12 Q. Do you know whether there was ever any finding  
13 that this was a shooting that was outside of policy?

14 A. Yes. I believe there was.

15 Q. Was that overturned?

16 A. It was in arbitration.

17 Q. Do you know why it was originally found to be in  
18 violation of policy?

19 A. No, I don't.

20 Q. How often do disciplinary determinations get  
21 overturned by arbitration?

22 MR. HALLORAN: Objection.

23 A. I wouldn't know.

24 BY MS. GELSOMINO:

25 Q. Are you aware that the City of Columbus settled

1     **this case with the four year old who was shot?**

2     A.         I believe they paid the family money, yes.

3     **Q.         Do you agree with that decision?**

4     A.         Personally, or speaking for the division?

5     **Q.         Speaking for the division.**

6     A.         Yes.

7     **Q.         How about personally?**

8     A.         Yes. But I qualify that. I believe that the  
9     Columbus Division of Police -- a personnel from the  
10    division of police shot a four year old child. Should  
11    we pay the family money for that, absolutely. Does that  
12    mean that the officer did anything wrong, I do not  
13    believe those two equate. I do not think the officer  
14    did anything wrong in this case

15   **Q.         All right. Then PIS 2015-0016 is the shooting**  
16   **of Deaunte Bell-McGrew. You reviewed the CIRT also so**  
17   **you're familiar with the facts of this case, right?**

18   A.         Yes.

19   **Q.         This was a deadly shooting, so did CIRT come to**  
20   **any conclusions?**

21   A.         CIRT did not. This case was turned over to the  
22   prosecutor's office and a Grand Jury.

23   **Q.         What was the position of CIRT at the conclusion**  
24   **of the investigation?**

25   A.         We agreed with the Grand Jury's decision.

1       **Q.           What factors did you rely upon in your agreement**  
2       **with the Grand Jury's decision?**

3       A.           Well, Officer Narewski was in conversation with  
4       Mr. Bell. He recognized Mr. Bell from previous contacts  
5       in the area. What made them very suspicious that  
6       Mr. Bell was armed was he kept reaching down in between  
7       his legs in the vehicle. He was told repeatedly to stop  
8       doing that, and those are things that the officers pick  
9       up on that made them suspicious that he may be armed.  
10      When Narewski was approaching him and opened the door --  
11      I can't really recall whether at that moment in time he  
12      reached towards his waistband or reached back down, but  
13      Narewski felt he may been armed and he grabbed ahold of  
14      his left arm. At the time the suspect turned to his  
15      right, Officer Baase saw the gun, yelled "gun" to his  
16      partner, Narewski. Narewski now knew that the suspect  
17      was going for the gun, so he tried to get control of the  
18      suspect's right arm so he couldn't get the gun. They  
19      wrestled inside the vehicle. At no time could Narewski  
20      actually get ahold of the right hand.

21               The gun was in the right side pocket of the  
22      suspect's hoodie. Officer Baase fired one round through  
23      the window of the vehicle, hoping to strike the suspect  
24      before the suspect could access the weapon and shoot his  
25      partner. At the time Narewski had backed out, the

1 suspect still had the gun in his pocket. The suspect  
2 came out towards the opening of the vehicle and  
3 believing that -- I think he turned on Officer Narewski,  
4 too. Believing that he was about to shoot Officer  
5 Narewski fired and killed the suspect.

6 **Q. Was there any difference between the version of**  
7 **the events told by the different officers in this case?**

8 A. I'm trying to recall the specific details of  
9 this. I don't know that there were any glaring  
10 differences in this case, especially where the suspect  
11 was concerned. One of the front passengers claimed to  
12 be asleep, and both officers said that the individual  
13 was awake the whole time. That I recall.

14 **Q. Did that have any input in your investigation or**  
15 **your conclusions of CIRT?**

16 A. In regard to the suspect's testimony?

17 **Q. In regard to anything.**

18 A. I mean, the front seat passenger's testimony?

19 **Q. Did the front seat passenger's testimony or the**  
20 **fact that you just noted that he claimed to be asleep**  
21 **and other people claimed that he was awake, did that**  
22 **impact the position of CIRT at all?**

23 A. No. He claimed to be asleep and didn't see  
24 anything until it was over, so he didn't impact the  
25 investigation one way or other.

1 Q. There's no allegation that Deaunte Bell-McGrew  
2 ever had a gun in his hand, right?

3 A. Is there any allegation that he ever had the gun  
4 in his hands? No. The officers couldn't say that for  
5 sure.

6 Q. Did you ever have any conversation with anyone  
7 in FRB or the chain of command regarding Deaunte  
8 Bell-McGrew?

9 A. Regarding Bell?

10 Q. Regarding this case. Yeah.

11 A. Not that I recall.

12 Q. Did you ever speak to the prosecutor about it,  
13 anyone in the prosecutor's office?

14 A. I don't believe I had any conversation with the  
15 prosecutor's office.

16 Q. Okay. So in the case of Deaunte Bell-McGrew the  
17 officers could not say that Deaunte was ever holding the  
18 gun, right? You just said that.

19 A. Correct.

20 Q. So he was shot by both officers in that case  
21 because they believed that he may at some point in the  
22 future have a gun in his hand, right?

23 MR. HALLORAN: Objection.

24 A. I think, according to both officers, the fact  
25 that he was actively resisting them and had a gun in his



1 pocket made it a very dangerous situation for them and  
2 they were in fear for their lives.

3 BY MS. GELSOMINO:

4 **Q. At the time that Narewski shot Deaunte**  
5 **Bell-McGrew, was he actively resisting in any way?**

6 A. I don't believe technically he was resisting.  
7 He had been resisting immediately prior to that. The  
8 fact that Baase had shot out the window, the glass went  
9 flying, and Narewski believed that either the suspect or  
10 Baase had shot and he backed out of the vehicle. The  
11 suspect came out of the vehicle as well. It was  
12 something that happened really fast. He wasn't hands-on  
13 with the officer at the time, but the officer also  
14 didn't have control of his hands so he could easily  
15 access the weapon.

16 **Q. The officer was some distance away from Deaunte**  
17 **Bell-McGrew at the time that he shot Deaunte, right?**

18 A. Yes, he was.

19 **Q. And at the time that he shot Deaunte, Deaunte**  
20 **was not resisting?**

21 MR. HALLORAN: Objection.

22 A. At the precise moment that he pulled the trigger  
23 there was no physical contact between Mr. Bell and  
24 Officer Narewski.

25 BY MS. GELSOMINO:

1       **Q.           There was no resisting whatsoever happening at**  
2       **the time that Narewski shot Bell-McGrew, right?**

3                               MR. HALLORAN:   Objection.

4       A.           I think Bell was resisting pretty much  
5       throughout this engagement.   The fact that they'd broken  
6       off from each other at that particular point doesn't  
7       negate the immediately previous resisting.

8       BY MS. GELSOMINO:

9       **Q.           So immediately previously to the time that**  
10       **Narewski shot him, it's your position that Bell was**  
11       **resisting, correct?**

12      A.           Correct.

13       **Q.           At the time that Narewski shot him, Bell was not**  
14       **resisting, right?**

15      A.           Well, it depends on your definition of  
16       resisting.   He wasn't giving up.   He didn't have his  
17       hands in the air or getting down on the ground.   He was  
18       still in effect resisting his own arrest.

19       **Q.           Bell-McGrew was shot as he was exiting the**  
20       **vehicle, right?**

21      A.           He was where the door meets the frame of the  
22       vehicle.   He was halfway in, and halfway out of the car.  
23       That's my understanding.

24       **Q.           Was he in the process of getting out of the car?**

25      A.           My understanding, yes.

1 Q. Okay. And do you know whether or not he was in  
2 the process of getting out of the car to surrender to  
3 the police?

4 A. I do not know that, but he did not do that, so I  
5 don't know.

6 Q. Well, you don't know whether or not he did that  
7 because he was shot by Narewski.

8 A. Well, he did turn. I believe the officer said  
9 that he did turn to his right and that's when he fired  
10 upon him, so he was turning towards the officer and he  
11 was armed, so that wasn't really an action of giving up.

12 Q. Well, so is it your position then, that when an  
13 individual turns toward an officer and may potentially  
14 be armed that officer would be acting both within policy  
15 and not --

16 A. If the officer believed that the suspect was  
17 going to fire upon him, as Narewski said, then yes.

18 Q. Narewski's basis for stating that he believed  
19 that Bell-McGrew could potentially fire on him was based  
20 on speculation, correct?

21 MR. HALLORAN: Objection.

22 A. I don't think it was speculation that Mr. Bell  
23 had a firearm on his person. That was fact.

24 BY MS. GELSOMINO:

25 Q. At the time that Narewski pulled the trigger and

1     **shot Bell-McGrew, he had never seen a gun on Bell-McGrew**  
2     **anywhere, right?**

3     A.       I don't recall specifically Narewski. I know  
4     Baase had seen the gun in his pocket and told Narewski  
5     that he had a gun, but I don't recall if he ever  
6     mentioned seeing him with a weapon, no.

7     **Q.       So Bell-McGrew was shot as he was getting out of**  
8     **the vehicle without any weapon in his hands, right?**

9     A.       Correct.

10    **Q.       Any alleged fear of death or great bodily harm**  
11    **would have been based on fear of something that**  
12    **Bell-McGrew may do, right?**

13    A.       Yes.

14                       MR. HALLORAN: Objection.

15    BY MS. GELSOMINO:

16    **Q.       Is it the position of the division of police**  
17    **that possession of a firearm will justify use of deadly**  
18    **force, possession on a person's body of a firearm?**

19    A.       Mere possession, no.

20    **Q.       And so, as you've articulated at this point, the**  
21    **position of CIRT at the end of the investigation was**  
22    **based on Narewski's articulation of fear based on what**  
23    **Bell-McGrew may have done, but didn't actually do,**  
24    **right?**

25    A.       Well, I didn't say that he didn't actually do.

1 It was based on what both officers were saying that  
2 Bell's actions were.

3 Q. Were the conclusions of CIRT at the end of the  
4 investigation based on Narewski's and Baase's  
5 articulation of what Bell-McGrew may have done in the  
6 future?

7 A. It was based on what those officers articulated  
8 they believed at the time they pulled the trigger.

9 Q. I want to talk specifically about Narewski.  
10 What Narewski believed at the time was that Bell-McGrew  
11 may take actions in the future which could put him in  
12 harm's way?

13 MR. HALLORAN: Objection.

14 A. Yes.

15 BY MS. GELSOMINO:

16 Q. Okay. Now we're looking at 2016. 2015 would  
17 have been Exhibit 6, and Exhibit 7 is 2016.

18 - - - -

19 (Thereupon, Plaintiff's Exhibit 7 was marked for  
20 identification.)

21 - - - -

22 BY MS. GELSOMINO:

23 Q. See how many I'm not asking you about?

24 A. Thank you.

25 Q. You're welcome. Are these your red lines in

1     **here?**

2     A.           Yes. I didn't save the changes.

3     **Q.           Look at PIS 2016-0014. Do you recall this case?**

4     A.           I do recall being out there that night, but I  
5     don't recall the specifics of the investigation.

6     **Q.           What were the CIRT findings in this case?**

7     A.           It appears that we found the sergeant to be  
8     acting within the scope of his duties and insufficient  
9     evidence that he committed a crime. We also found that  
10    the suspect, the civilian suspect, once identified, that  
11    he committed the aggravated robbery of the gas station.

12   **Q.           In this case the sergeant fired his shotgun at**  
13   **the robbery suspect as he was leaving the gas station,**  
14   **right?**

15   A.           He did fire a shotgun, but I don't remember the  
16   particulars of where the suspect was or what the suspect  
17   was doing when he fired the shotgun.

18   **Q.           Was there ever any allegation that the suspect**  
19   **was presenting an actual threat of bodily harm or death**  
20   **to the officer at the time that he was shot?**

21   A.           I don't recall. I don't remember what the  
22   officer said at the time. I know that the suspect had  
23   been committing these robberies and that he was armed  
24   and exiting the store. He had a duffle bag, I remember  
25   that, but I don't recall what the sergeant said the

1 suspect's actions were or what we determined the  
2 suspect's actions to have been during the shooting. I  
3 don't recall that.

4 **Q. Okay.**

5 A. I do believe we had video in that one to refer  
6 to as well, but I don't recall.

7 **Q. All right. Let's talk about Tyree King. You**  
8 **reviewed the CIRT package before you came here, right,**  
9 **so you're familiar?**

10 A. I did.

11 **Q. I understand this was a fatal shooting, so**  
12 **again, this was presented to the Grand Jury, right?**

13 A. It was, yes.

14 **Q. What was the position of CIRT at the conclusion**  
15 **of this investigation?**

16 A. Well, again, as I said, we don't make  
17 conclusions in these situations. We refer them to the  
18 prosecutor, who refers them to the Grand Jury. The  
19 Grand Jury found there not to be a crime committed by  
20 the officer, and I would say we agreed with that.

21 **Q. Did you ever write down the position of the CIRT**  
22 **team at any point or your position?**

23 A. I don't believe so, no. It being fatal we don't  
24 put that determination in the investigation. I don't  
25 believe so.

1       **Q.           Okay. Why do you agree with the Grand Jury's**  
2       **finding in this case?**

3       A.       I believe that Tyree King and other individuals  
4       had just committed an armed robbery and they were  
5       fleeing from the police out of that crime. At the time  
6       that the officer fired his weapon he had seen a gun  
7       tucked into the waistband, what he believed to be the  
8       handle of a gun, tucked into the waistband of Tyree  
9       King, and according to the officer, Tyree King had  
10      attempted to pull that out two or three times jerking at  
11      it, and when it came out he saw it had a laser sight on  
12      it, one of the things he noticed about the gun. He  
13      believed it to be a real gun and that his life was in  
14      danger, and he fired upon Tyree King striking him and  
15      killing him. It was later discovered that the gun was  
16      actually a pellet gun even though it looked like a real  
17      gun.

18      A.       If there were witness statements that said Tyree  
19      King never actually pulled the gun out would that have  
20      changed the position of CIRT.

21                               MR. HALLORAN: Objection.

22      A.       If there were witness statements that Tyree King  
23      never attempted to pull the gun and following officer  
24      commands, then, yes, it would have.

25      BY MS. GELSOMINO:



1 Q. If Tyree King had not actually pulled the toy  
2 gun out of his waistband, but was still not complying  
3 with officer's orders to stop running, would that have  
4 justified the officer's use of deadly force?

5 MR. HALLORAN: Objection.

6 A. No.

7 BY MS. GELSOMINO:

8 Q. In your CIRT investigation into the shooting of  
9 Tyree King, was the background with previous uses of  
10 force by Mason considered?

11 A. We were aware of the previous incidents of  
12 deadly force by Mason, yes. It did not affect our  
13 decision-making in this particular incident, no.

14 Q. Why not?

15 A. Because we were acting on the merits of this  
16 particular case and what occurred during this incident.  
17 We were collecting the facts on this particular case.

18 Q. Do you think that the fact that an officer has  
19 previously used deadly force and, in fact, had been  
20 involved in fatal shootings could impact the  
21 determination about whether or not it was reasonable for  
22 him to believe that he may have faced an imminent fear  
23 of death or great bodily harm?

24 MR. HALLORAN: Objection.

25 A. I do believe that could play a role in that, and

1 that's why during our interviews we ask them that.  
2 That's one of the final questions that I go over with  
3 officers, have you been involved in a police involved  
4 shooting in the past, and did that previous incident  
5 affect you in any way in your decision making in this  
6 PIS? I don't recall off the top of my head how he  
7 responded to that.

8 BY MS. GELSOMINO:

9 **Q. How many times have you interviewed police**  
10 **officers in a police involved shooting who had**  
11 **previously -- who had been involved in other uses of**  
12 **deadly force?**

13 A. Numerous times. I couldn't tell you  
14 specifically the number, but numerous times.

15 **Q. How many times have you interviewed or has CIRT**  
16 **investigated a fatal use of deadly force by an officer**  
17 **who had previous uses of fatal deadly force?**

18 A. Again, I couldn't give you a specific number,  
19 but we have had those investigations in the past.

20 **Q. How many officers in the division of police do**  
21 **you think have been involved in more than one fatal use**  
22 **of deadly force?**

23 A. Multiple officers. I wouldn't want to guess. I  
24 don't know how many, but there's multiple officers that  
25 have been involved in those situations.

1 Q. More than five officers who have killed more  
2 than one person in the line of duty?

3 A. Probably.

4 Q. More than ten?

5 A. I don't know specifically.

6 Q. Can you name any other officer aside from Mason  
7 who has killed more than one civilian?

8 A. I believe there are a few. I believe Dave  
9 Sibner is one. Possibly Chuck Distlehorst. Possibly  
10 Howard Brenner. Brian Mason. I'm sure there are more,  
11 but I don't know right off the top of my head.

12 Q. Are all of those officers that you just named  
13 still working as police officers within the Division of  
14 Police in Columbus?

15 A. Yeah. I believe so.

16 Q. Have any of them been disciplined for their  
17 multiple uses of deadly force?

18 A. I don't believe so, no.

19 Q. In the case of the shooting of Tyree King, did  
20 CIRT investigate the racial slurs that were alleged in  
21 this case?

22 A. We did.

23 Q. How?

24 A. I know that we reinterviewed Demetrius Braxton.  
25 We also gave Demetrius a polygraph out of this case. I

1 don't remember the specific details.

2 **Q. Why did you give Demetrius a polygraph?**

3 A. We didn't find him to be credible. I can't  
4 think of any other reason we'd give him a polygraph.

5 **Q. Why did you find him to be less than credible?**

6 A. I think his stories changed. As I said, I'm not  
7 really sure specifically what those were.

8 **Q. Did you give any of the officers polygraphs?**

9 A. No.

10 **Q. How often has CIRT given polygraphs to civilian**  
11 **witnesses in other cases?**

12 A. CIRT, I don't believe we've ever given a  
13 polygraph to any civilian witness. On homicide we do  
14 that all the time, but in CIRT I don't believe we have.

15 **Q. The only person that CIRT has ever given a**  
16 **polygraph to is Demetrius Braxton?**

17 A. I think so, yes.

18 **Q. But you can't articulate why you did that?**

19 A. I don't recall the specifics, no. I think that  
20 it was because he was the only person that was pretty  
21 much not saying what everyone else was saying out there,  
22 and we wanted to find out whether he was telling us the  
23 truth or not.

24 **Q. Did you trust the results of the polygraph?**

25 A. Well, I think the polygraph is a useful tool. I

1 don't know that I believe in it 100 percent, no.

2 **Q. In this case did you believe it?**

3 A. I believe that in this case he showed signs of  
4 deception, and I think we thought that going in. Often  
5 times we use a polygraph to try and see the person's  
6 reaction when they agree to take the polygraph, and then  
7 we reinterview them after the polygraph has shown signs  
8 of deception, or whatever, to see if they will give us  
9 more information, but I don't specifically remember what  
10 the details were with that.

11 **Q. Did that happen in this case with Demetrius**  
12 **Braxton?**

13 A. I do believe so. I believe he was interviewed  
14 after as well, but I don't recall what he said.

15 **Q. Before you administered the polygraph to**  
16 **Demetrius Braxton, had you already determined that he**  
17 **was being untruthful?**

18 A. I think the detectives were leaning that way,  
19 yes.

20 **Q. And is that because he was telling a story that**  
21 **was different than the officers' stories?**

22 A. I believe so, yes.

23 **Q. Okay. What was done to investigate the racial**  
24 **slur allegations?**

25 A. I don't specifically recall.

1 Q. Okay. Has CIRT team ever investigated officers  
2 for bias or racial discrimination?

3 A. No. That's not really part of our process.  
4 That would fall more under the purview of the chain of  
5 command or Internal Affairs.

6 Q. Okay. You previously discussed in this  
7 deposition the importance of considering whether or not  
8 the officer had malicious intent at the time of the  
9 shooting, right?

10 A. Yes.

11 Q. Do you agree that the use of a racial slur at or  
12 around the time of the use of deadly force could  
13 indicate potential malicious intent?

14 A. Possibly.

15 Q. Okay. Do you believe it would ever be  
16 appropriate for an officer to use a racial slur in the  
17 scope of his duties?

18 A. No.

19 Q. It should be concerning to you if there was an  
20 allegation that an officer used a racial slur right at  
21 the time that he shot and killed a boy, right?

22 A. Yes.

23 Q. So did CIRT do anything to follow-up on that  
24 allegation?

25 A. I don't really recall. I recall there was an

1 allegation of a racial slur, but I don't recall what we  
2 did to investigate that or if we passed that onto  
3 Internal Affairs. I don't recall.

4 **Q. Who was the lead detective in the investigation?**

5 A. William Gillet.

6 **Q. Were all of the interviews on video in the Tyree**  
7 **King case?**

8 A. I'm sure they were not. They should all be on  
9 audio, but not necessarily on video.

10 **Q. But they were recorded?**

11 A. Yes.

12 **Q. Was the interview of Demetrius Braxton after the**  
13 **polygraph recorded?**

14 A. It should have been at least audio recorded. I  
15 don't know if it was additionally video recorded or not.

16 **Q. And it would not have been appropriate to**  
17 **conduct that interview after the polygraph and not**  
18 **record it, right?**

19 A. Right. All of our interviews are supposed to be  
20 recorded.

21 **Q. And that's pursuant to the policies and**  
22 **practices of the division?**

23 A. Yes.

24 **Q. It would not be consistent with the policies or**  
25 **practices of the division to cutoff a video or otherwise**

1     **alter it, right?**

2     A.         Correct.

3     **Q.         Or a recording?**

4     A.         Well, the audio recordings are a little bit  
5     different. We have very old tape recorders and we do  
6     often have malfunctions, but if there's a malfunction  
7     that should be included in the summary.

8     **Q.         It should be indicated in the summary?**

9     A.         Yes.

10    **Q.         Because to cutoff a recording or somehow alter a**  
11    **recording would not be consistent with the policies or**  
12    **practices within the division of police, right?**

13    A.         Correct.

14    **Q.         And it would be wrong, right?**

15    A.         Correct.

16    **Q.         Mason testified that he did not complete his own**  
17    **use of force report after the shooting of Tyree King**  
18    **even though he should have per division policy. Do you**  
19    **know why not?**

20    A.         His own use of force report?

21    **Q.         Yes?**

22    A.         No officers fill out their own use of force  
23    report pursuant to division policy in a fatal shooting.  
24    I complete that for the officers.

25    **Q.         Okay. Did CIRT consider any other factors that**



1     **you haven't yet told me about which would have led you**  
2     **to the conclusion that Mason did not act criminally?**

3     A.       We had a nun as a witness. I'm sorry. I just  
4     always wanted to say that. It never happens. We did  
5     have eyewitnesses and they corroborated the officer's  
6     statements.

7     **Q.       Anything else?**

8     A.       I'm not sure, but I don't believe so.

9     **Q.       How did the nun corroborate Mason's statements**  
10    **about the justification for that shooting?**

11    A.       I'm sorry.

12    **Q.       How did the nun corroborate Mason's statement?**

13    A.       Basically she just said that she saw the  
14    officers chasing two individuals, and I'm paraphrasing,  
15    but the gist was that she saw two individuals running  
16    from police officers and they ran towards an officer and  
17    that she saw the officer fire. The corroboration was  
18    more or less the placement of the officer and Tyree  
19    King. She was not in a position -- there was a car  
20    between her and Tyree King, so she was not in a position  
21    to see him attempting to draw the weapon, but she did  
22    place them where the officer said they were located.  
23    And she said that the officer fired and that the boy  
24    went down, and she was under the impression, I believe,  
25    she said she was under the impression that he was being

1 Tased. She thought he was sleeping.

2 **Q. She never saw a gun?**

3 A. She did not see a gun, no.

4 **Q. At the top of this page here it says that the**  
5 **status of the Tyree King case is exceptionally cleared.**

6 A. Correct.

7 **Q. Why does it say that?**

8 A. As I discussed earlier, that's a report  
9 classification. So once the Franklin County Grand Jury  
10 issues a no bill in that the premier one report is  
11 exceptionally cleared.

12 **Q. Okay. Look at this case here, the shooting of**  
13 **Jacquerious Robinson. What was the CIRT finding?**

14 A. That the officers acted within the scope of  
15 their duties and there was insufficient evidence to  
16 prove that they committed a crime.

17 **Q. Was the suspect armed at the time that he was**  
18 **shot?**

19 A. I believe so. It says, "ran from police and had  
20 a handgun on his person." I believe that means he was  
21 armed at the time.

22 **Q. What were the allegations that the officers**  
23 **faced an imminent fear at the time?**

24 A. I don't recall specifically. I think the  
25 suspect turned toward them with the firearm, but I don't

1 recall specifically. I'd have to review the case.

2 **Q. Okay. I only have your red line version here.**

3 **I'll share this with you. Has this been updated at all?**

4 **A. Probably not.**

5 **Q. The red lines are correct, right?**

6 **A. Yeah. That's probably just, it's still on**  
7 **tracking changes from previously.**

8 **Q. In this case on page four, which is 2018-003,**  
9 **what was the conclusion of CIRT?**

10 **A. That the officers were acting within the scope**  
11 **of their duties, and there was insufficient evidence**  
12 **that they committed a crime.**

13 **Q. In this case the individual was shot as he began**  
14 **to draw a handgun. Is that true?**

15 **A. I believe that's what the officers said, yes.**

16 **Q. Do you know whether he had a handgun in his hand**  
17 **at the time that he was shot?**

18 **A. I do not recall. What I remember best about**  
19 **that case is that it was an incredibly bad snow storm**  
20 **that night, and I do remember that his girlfriend was in**  
21 **the car with him at the time of the incident, but I**  
22 **don't remember specifically if he had the gun in his**  
23 **hand after the shooting.**

24 **Q. All right. Take a look at this one, 2018-0013.**  
25 **In this case what were the conclusions of CIRT?**

1 A. I don't recall this incident at all. I may not  
2 have been on this one. I just have no recollection of  
3 this case.

4 **Q. Okay. Take a look at this one 2017-0014?**

5 A. Okay.

6 **Q. What were the conclusions of CIRT in this case?**

7 A. I believe the conclusions were that the officers  
8 were acting within the scope of their duties, and there  
9 was insufficient evidence to charge them criminally. I  
10 don't believe this has gone through the Firearms Review  
11 Board yet.

12 **Q. What is this charge here, RSP auto? What does**  
13 **that mean?**

14 A. Receiving stolen property. A car was stolen.

15 **Q. Were there any allegations that this individual**  
16 **was armed at the time that he was shot?**

17 A. I don't recall. If I remember correctly, the  
18 officers -- the one officer believed that the suspect  
19 was trying to hit them with his vehicle, and the other  
20 officer believed that the suspect had run over the other  
21 officer and that was his reason for firing. If I'm  
22 remembering that correctly.

23 MS. GELSOMINO: I'm going to mark that  
24 one as **Exhibit 9**. And I have a quick question about  
25 2017 so I'm going to mark that as 8, so we're in

1 order.

2 - - - -

3 (Thereupon, Plaintiff's Exhibits 8 & 9 were marked for  
4 identification.)

5 - - - -

6 BY MS. GELSOMINO:

7 **Q. So on this one, page four of 2017, it's PIS**  
8 **2017-0003. Take a look at that one, please.**

9 A. Okay.

10 **Q. What's the position of CIRT about this one?**

11 A. That the officer was acting within the scope of  
12 her duties as a law enforcement officer, and there's  
13 insufficient evidence that she committed a crime.

14 **Q. And in this case the suspect pointed a gun at**  
15 **himself, correct?**

16 A. Yes.

17 **Q. Is that a basis for an officer using deadly**  
18 **force?**

19 A. It can be.

20 **Q. When?**

21 A. Well, I don't specifically remember the formal  
22 statement of Officer Wilkenson, but I do know that  
23 officers in the training academy and DTU, everyone of  
24 them is trained that if a suspect is suicidal they're  
25 also homicidal, and there's also a split-second from

1 here to here.

2 **Q. For the record you're indicating --**

3 A. From the temple to the officer. I don't  
4 remember specifically her formal statement, but that's  
5 what I would imagine.

6 **Q. Is it the position of the department that it**  
7 **would be appropriate for an officer to shoot a suicidal**  
8 **suspect who was threatening themselves, only themselves?**

9 A. If they were only threatening themselves and  
10 there was zero chance of them turning the gun on the  
11 officer, for example, if the officer was behind a  
12 significant cover or something of that nature, then no,  
13 they would not be justified in shooting them at that  
14 point. Only if they were a danger to the officer or  
15 someone else.

16 **Q. So in this case that we're looking at with Keith**  
17 **Marshal who was pointing a gun at only himself, how**  
18 **could the officer have been justified in shooting at him**  
19 **at that point?**

20 A. I don't recall what her justification was. I'd  
21 have to read her formal statement to be able to answer  
22 your question.

23 **Q. Do you agree that if she shot him just because**  
24 **he was pointing the gun at himself and no one else, and**  
25 **there was no other threat that he created at the time,**

1       **then that shooting would have been excessive, right?**

2                       MR. HALLORAN:  Objection.

3       A.           Probably, yes.  That's why I'm saying, I don't  
4       recall what threat she articulated.

5       BY MS. GELSOMINO:

6       **Q.           How many uses of deadly force have there been**  
7       **within the division since 2009?**

8       A.           Since 2009, I don't know a specific number.  I  
9       know we range in anywhere from 13 to 26 a year.  Not all  
10      of those are firearms.  Some are death in custodies,  
11      some are foreign agencies and things of nature.  As far  
12      as the actual shots fired it would be less than the  
13      overall total.  We've pulled the numbers before, but I  
14      don't know offhand specifically.

15      **Q.           Okay.  Within all of those cases within the**  
16      **division since 2009 that an officer has used deadly**  
17      **force, how many of those officers have been disciplined?**

18      A.           I have no idea.

19      **Q.           Since 2009, how many officers who used deadly**  
20      **force have been charged criminally?**

21      A.           One.

22      **Q.           Since 2009, how many times has a use of deadly**  
23      **force been determined to be outside of policy?**

24      A.           I don't know.

25      **Q.           Since 2009, how many officers that have used**

1     **deadly force have been suspended?**

2     A.         I don't know.

3     **Q.         Since 2009, how many officers who have used**  
4     **deadly force have been terminated?**

5     A.         Terminated, I don't believe any.

6     **Q.         Have you ever -- excuse me.**

7     A.         I'm not positive of that.

8     **Q.         Okay. You can't think of any officer who was**  
9     **terminated as a result of deadly force?**

10    A.         I don't believe so, no.

11   **Q.         Have you ever observed an officer use what you**  
12   **believe to be excessive force within the Division of**  
13   **Police in Columbus?**

14    A.         Have I ever observed anyone use excessive force?  
15    I don't believe so, no.

16   **Q.         Have you ever heard of an officer using force**  
17   **that you believed to be excessive?**

18    A.         Yes.

19   **Q.         Tell me about that.**

20    A.         I can't specifically recall which cases, but I  
21    know that there have been incidents where officers have  
22    been accused of that, and when I heard the particulars I  
23    agreed, but I can't tell you specifically what case that  
24    would be.

25   **Q.         Okay. Have you ever made any kind of finding at**



1     **any point in your career as a supervisor that any of**  
2     **your subordinates used force that you deemed to be**  
3     **excessive?**

4     A.       I don't recall. And I don't want to say no,  
5     because I may have, but I don't really remember. It  
6     would have been a long long time ago when I was on  
7     patrol, not in homicide.

8     **Q.       Okay. Have you ever raised any concerns about**  
9     **any of your subordinates' uses of force within your**  
10    **chain of command?**

11    A.       I don't believe so.

12    **Q.       Have any of your subordinates or anyone in your**  
13    **department come to you to say they believe another**  
14    **officer used force that was excessive?**

15    A.       I was involved in one investigation as a patrol  
16    officer where there was a use of force, and one of the  
17    officers involved had notified supervision that they  
18    believed it to be excessive and there was an  
19    investigation, chain of command investigation, that  
20    ended up going to a civil service hearing, and that  
21    officer was disciplined.

22    **Q.       The officer who used the force or the officer**  
23    **who made the complaint?**

24    A.       The officer who used the force was disciplined.

25    **Q.       What happened to the officer who made the**

1 **complaint?**

2 A. Nothing.

3 **Q. So, in all of your years as an officer within**  
4 **the Columbus Division of Police, is that the only time**  
5 **that you could think of that an officer raised a concern**  
6 **about the level of force used by another officer?**

7 A. That I was specifically involved in, yes.

8 **Q. What about like just things that you've heard**  
9 **about that you weren't specifically involved?**

10 A. I really don't recall.

11 **Q. Can't think of any other times?**

12 A. I'm sure there have been, but I can't recall  
13 them.

14 **Q. Has the department ever found an officer's use**  
15 **of deadly force to be unnecessary?**

16 A. Unnecessary. I don't know that those are  
17 parameters that we use. I can say that I do not  
18 believe, at least since 2009, that any officer has been  
19 charged criminally for a use of deadly force other than  
20 Detective Mitchell. As far as being ruled  
21 out-of-policy, I'm sure there's plenty of those that  
22 shootings have been ruled out-of-policy by the division  
23 and discipline issued. As far as unnecessary, I'm not  
24 sure that we use those parameters.

25 **Q. Okay. Has the Columbus Division of Police ever**

1     **found an officer's use of deadly force to be excessive?**

2     A.           I'm not sure of the answer to that. I don't  
3     know if that's been the case, other than the one I can  
4     refer to is Detective Mitchell. Other than that I'm not  
5     sure.

6     **Q.           Has the Columbus Division of Police ever found**  
7     **an officer's use of force to be unjustified?**

8     A.           Use of force to be unjustified.

9     **Q.           Deadly force. Let me ask that question again.**  
10    **Has the Columbus Division of Police ever found an**  
11    **officer's use of deadly force to be unjustified?**

12    A.           Other than Detective Mitchell, I can't recall  
13    any.

14    **Q.           Okay. Have you ever reviewed a case in which**  
15    **you found the officer's use of deadly force to be**  
16    **unnecessary?**

17                   MR. HALLORAN: Objection.

18    A.           I don't make that determination. As far as CIRT  
19    is concerned, we're doing a criminal investigation and  
20    we're determining whether we believe the officer  
21    committed a crime or not.

22    BY MS. GELSOMINO:

23    **Q.           Have you ever come to your conclusion that any**  
24    **officer's use of deadly force that you've reviewed is**  
25    **unnecessary?**

1 MR. HALLORAN: Objection.

2 A. Deadly force unnecessary, I would have to say  
3 no.

4 BY MS. GELSOMINO:

5 Q. Okay. Have you ever reviewed an officer's use  
6 of deadly force with division of police and found that  
7 use of deadly force to be excessive?

8 A. No.

9 Q. Have you ever reviewed a use of deadly force  
10 within the Columbus Division of Police and found that  
11 use of force to be unjustified?

12 A. No.

13 Q. All of the policies, procedures and practices  
14 and customs that we talked about today, they all applied  
15 at the time of the shooting death and the investigation  
16 into the shooting death of Tyree king, correct?

17 A. Yes.

18 Q. All of the policies, procedures, practices and  
19 customs that we talked about all applied at the time of  
20 the shooting death and the investigation of the shooting  
21 death of Deaunte Bell-McGrew, correct?

22 A. Yes.

23 Q. And all of the policies, practices and  
24 procedures and customs that we talked about today  
25 applied at the time of the shooting of James England and

1     **the investigation of the shooting of James England,**  
2     **correct?**

3     A.         Yes.

4     **Q.         And all the policies, practices, procedures and**  
5     **customs that we talked about today also applied at the**  
6     **time of the investigations of all of the other shootings**  
7     **on the spreadsheets that you have created with CIRT,**  
8     **correct?**

9                     MR. HALLORAN:  Objection.

10    A.        I believe so.  The CIRT manual was revised in  
11    December of 2013.  So you showed some from '11 and '12,  
12    and some of those may not have applied at the time, but  
13    from December 19th of 2013 forward I would say, yes.

14    BY MS. GELSOMINO:

15    **Q.         Okay.  What were the changes in 2014?**

16    A.        I don't really recall.  I'm sure research and  
17    development keeps copies of the previous versions.

18    **Q.         Okay.  Was there any real substantive change of**  
19    **the customs and practices of how the investigations were**  
20    **completed?**

21    A.        Not really.  I think they more put it in writing  
22    where it was not in writing before, if that makes sense.

23    **Q.         Okay.  For all intents and purposes, the**  
24    **procedures and policies didn't change, they were just**  
25    **memorialized?**

1 A. Correct.

2 MS. GELSOMINO: All right. I'm done.

3 Thank you very much.

4 A. Thank you.

5 MS. GELSOMINO: I appreciate it.

6 MR. HALLORAN: We'll read.

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STATE OF OHIO,  
CUYAHOGA COUNTY.

I, Megan A. Medved, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, SERGEANT ERIC PILYA, was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to Stenotype in the presence of said witness, afterwards transcribed upon a computer; and that the foregoing is a true and correct transcription of the testimony so given by the witness as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee of or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney of any of the parties in the above-captioned action; I am not financially interested in the action; and I am not, nor is the court reporting

1 firm with which I am affiliated, under a contract as  
2 defined in Civil Rule 28(D).

3  
4 IN WITNESS HEREOF, I have hereunto set my hand and  
5 affixed my seal of office at Cleveland, Ohio on December  
6 15th, 2020.

7  
8  
9 Megan Medved

10  
11 Megan A. Medved, a Notary Public  
12 in and for the State of Ohio.  
13 My Commission expires 9/17/23  
14  
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